



Planning & Transportation Commission

Staff Report (ID # 11073)

Report Type:	Action Items	Meeting Date: 2/26/2020
Summary Title:	840 Kipling Street: Request for Hearing on Variance	
Title:	PUBLIC HEARING / QUASI-JUDICIAL. 840 Kipling Street [18PLN-00185]: Recommendation on a Variance to allow (1) a Second-Story Addition to a Historic Home on a Substandard, Irregular Lot, and (2) an Extension of a Noncomplying Wall That Encroaches Into a Side Setback. Environmental Assessment: Exempt from CEQA in Accordance with CEQA Guidelines Section 15301 (Additions to Existing Structure). Zoning District: R-2 (Two Family Residential). For More Information Contact the Project Planner Christy Fong at cfong@m-group.us	
From:	Jonathan Lait	

Recommendation

The Planning and Transportation Commission (PTC) recommend that the City Council approve the requested Variance for 840 Kipling Street, for:

- a second-story addition to the historic resource on a substandard, irregular R-2 zoned lot, and
- a six-foot extension of the noncomplying wall, which currently encroaches 2'-6" into the required six-foot side yard setback, to provide additional first floor and basement level floor area

Report Summary

This report is to support the Planning and Transportation Commission's review and recommendation of a Variance for two-story, single-family home on a substandard, R-2 zoned lot. The project site is located within the boundaries of the South of Forest Area I Coordinated Area Plan (SOFA I). The Director tentatively approved the application for a Variance and the Individual Review (IR) application. Subsequently, a representative of the neighboring property at 441 Channing Avenue requested a hearing on both applications. The PTC is the reviewing body for Variances for which a hearing has been requested after the Director has issued a tentative decision. The Variance will now be acted on by the City Council, following the Commission's review and recommendation.

In a separate action, the Individual Review (IR) application will be discussed at a Director's Hearing, followed by a separate Director's decision that is appealable to Council. If the Director's decision on the IR is appealed, both the IR and Variance would be placed on the Council's consent calendar. If three Council members vote to remove the project from the consent calendar, the Council will have the opportunity to hear the appeal of the IR and Variance on a new noticed hearing.

Background

Process History

Martin Bernstein, the applicant representing the property owners, submitted applications for Individual Review and a Variance on June 6, 2018. The property owners reside in the existing single-story, single family residence located on a substandard R-2 zoned lot. The proposed project includes:

- exterior alterations,
- expansion of the basement and first floor at the rear, and
- second floor addition.

The requested variance is for:

- a second-floor addition to a one-story home on a substandard, irregular lot, and
- an approximately six-foot extension of an existing noncomplying wall, which encroaches 2'-6" into the required six-foot side yard setback.

In 1998, the Historic Resources Board (HRB) determined the existing residence was eligible as a 'contributing residence'. More recently, the HRB reviewed the project on February 14, 2019¹ and December 12, 2019². The HRB found the project, as conditioned, is consistent with all ten Secretary of Interior's Standards for Rehabilitation (SOI standards).

City staff determined the project conforms with all applicable zoning and municipal code requirements, including the Single-Family Individual Review Guidelines and the Variance regulations set forth in the Palo Alto Municipal Code (PAMC) Chapter 18.76.030. The Director of Planning and Development Services (Director) tentatively approved the project applications on January 15, 2020 (Attachment D). The Director's determination was based upon a review of all information contained in the project file, which included six neighbor letters received during the review process (Attachment C).

On January 23, 2020, the City received the hearing request from a representative of the neighboring property at 441 Channing Avenue. In addition to requesting a PTC hearing of the Variance, the requestor seeks a Director's Hearing of the Individual Review application. The Director's Hearing date is set for March 5, 2020. The Director's Hearing will be an opportunity to review the project's consistency with the five Individual Review Guidelines.

Project Description

The property is developed with a 1,192 square floor (sf), single-story, single-family residence and a detached garage containing 336 sf of floor area. The main residence is a one-story bungalow with an

¹ February 14, 2019 HRB staff report can be found at this link:
<https://www.cityofpaloalto.org/civicax/filebank/documents/68958>

² December 12, 2019 HRB staff report can be found at this link:
<https://www.cityofpaloalto.org/civicax/filebank/documents/74373>

attic, constructed in 1912. The residence is located on a substandard R-2 zoned lot. The home is a noncomplying facility, due to the 2'-6" encroachment into the right-side yard setback.

The applicant requested Individual Review and Variance approvals for:

- a 184 sf ground floor addition at the rear part of the main residence,
- a 397 sf partial basement beneath the rear addition, and
- a 489 sf second floor addition.

Along with the proposed additions, the applicant proposes modifications to existing windows and doors for all exterior walls of the building.

The main residence was designed with Craftsman style influence. The applicant proposes:

- composition asphalt roofing, to match the existing roofing,
- new exterior wood siding, with a similar profile as the existing siding,
- windows at the additions, comprised of aluminum-clad wood with simulated divided lites, with double-hung or awning sashes.

Requested Entitlements, Findings and Purview:

The PTC's purview is limited to review of and recommendation regarding the Variance request to allow:

- (1) A second-story addition with a height of 26 feet 8 ¼ inches on a substandard lot, on which development is limited to one habitable floor with a maximum height of 17 feet, and
- (2) An approximately 6'-4" horizontal extension to the existing noncomplying first floor and basement walls on the west elevation that encroaches 2'-6" into the required six-foot, right-side yard setback.

The Commissioners' comments and recommendation on this application should be specifically related to the variance request – the second story/height and side yard setback variance. Recommendations made by the PTC will be forwarded to the City Council for final action.

The process for evaluating a Variance is set forth in PAMC Chapter 18.76.030. A Variance is intended to provide a way for a site with special physical constraints to be used in ways similar to other sites in the same vicinity and zoning district. Variances provide a way to grant relief from strict application of the zoning regulations. Strict application of codes can subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the same vicinity and zoning district. Variance applications are evaluated to specific findings. All findings must be made in the affirmative to approve the project.

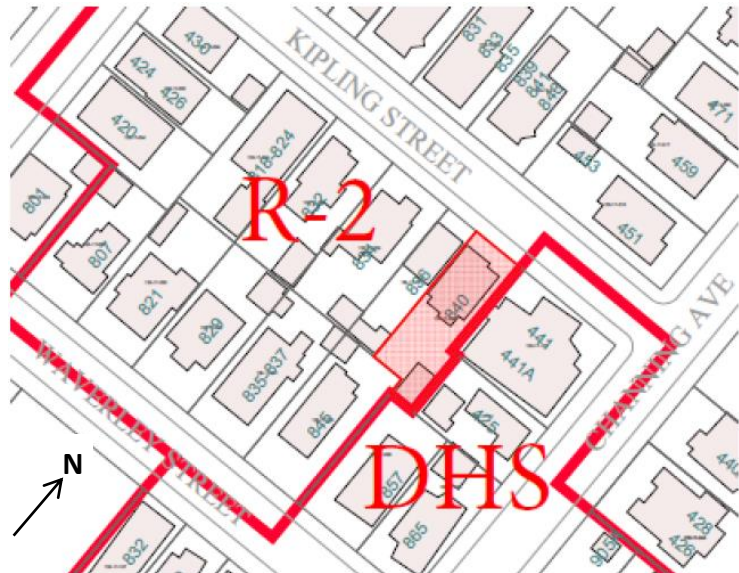
Additionally, the project also requires review and approval for the following application types not subject to PTC review:

- Single Family Individual Review: For the construction of a new second story in the R-2 zone district.
- Historic Review: For project involving exterior alteration and modifications of identified historic resources.

Analysis

Neighborhood Setting

The project site is surrounded by single-family, low-density and multi-family residential uses (Attachment A). The areas north and west of the site are zoned R-2 and areas to the east are zoned DHS (Detached Housing on Small Lots). The lot to the west of this residence is 836 Kipling Street, also a substandard lot. It contains a smaller one-story home constructed in approximately 1916. The lot at 441 Channing Avenue to the east of this site is larger and contains two units: a two-story single-family residence and a single-story accessory dwelling unit. The location map shows the project site's irregular shape and location.



The block in which the site is located has a variation of lot sizes, widths, and depths. Most of the substandard lots found on this block have a lot width of 25 feet and the lot areas are ranging from approximately 1,970 sf to 2,840 sf, where the remaining properties on this block have a consistent lot width of 50 feet and consistent lot area of 5,625 sf.

Site Information

The subject property has a non-rectangular shape with a lot width of 39 feet 6 inches and lot area of 4,893 sf, which is unique to the general lot pattern found in the block. The subject property is substandard as it does not meet the minimum lot requirements in the R-2 zone district. The lot area is less than 4,980 square feet (83% of the minimum lot area of 6,000 square feet in R-2 zone) and the lot width is less than 50 feet, which make the subject property a substandard lot.

Two protected redwood trees are found on the property and in the vicinity of the subject property. One additional Redwood tree was located on the property of 836 Kipling Street, prior to removal in 2018. The two protected trees have diameters of 42 inches and 26 inches are located near the rear property line, at 840 Kipling Street. These trees share a tree protection zone (TPZ) of 35 feet in radius and limit development on approximately 530 sf of the 2,268 sf buildable area on the subject property.

The required covered parking space for the main dwelling is located at the rear part of the lot in an existing one-car detached garage. The project will continue to utilize a 1'-6" by 75-foot easement area, granted by SummerHill Channing LLC along the left property line to access this rear detached garage. This easement area allows the fence of the subject property to extend beyond the legal property lines. The sole purpose of this easement is to grant access. The easement area is not considered as part of the subject lot in the review of the variance applications.

Consistency with the Comprehensive Plan, Area Plans and Guidelines³

The proposed site plan is found sensitive to the surrounding landscape and will minimize impact to the two protected trees on site (Policy N-2.9, N-2.10). A one-story structure is located immediately adjacent

³ The Palo Alto Comprehensive Plan is available online:
<http://www.cityofpaloalto.org/gov/topics/projects/landuse/compplan.asp>

to the subject property. However, the proposed additions have appropriate scale and height to respect nearby structures and existing neighborhood character (Policy L-3.1, L-6.1). The proposed additions will preserve natural light exposure for nearby residences, conforming to current regulations for daylight planes and setbacks (Policy L-6.8). The project will rehabilitate a residence with historic merit by preserving its historic integrity consistent with the SOI Standards (Policy L-2.9, L-6.4, L-7.1, L-7.8). The project is consistent with the objectives and relevant policies in the Comprehensive Plan as a whole.

The subject property is located within SOFA I. It is in a transitional area between R-2 and Detached Housing on Small Lots (DHS) zoning districts. The project, with increased living space, supports the City's policy for a range of housing options for various ages, household sizes, lifestyles, and incomes in the neighborhood (Policy H-6). Through the requested Variance from the strict development standards, the project will reconfigure building footprint and massing to preserve significant trees (Policy DC-7). The project is designed to be consistent with the SOI standards, which will reinforce its original architectural style and use (Policy DC-9). Overall, the project is compatible with the historical patterns of the surrounding low-density residential areas and is generally consistent with the SOFA I objectives and policies.

Zoning Compliance⁴

The purpose of R-2 zoning district is 'to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for single-family use by the Palo Alto Comprehensive Plan, under regulations that preserve the essential character of single-family use.' (PAMC Chapter 18.10.010(b)).

The project will maintain its original use as single-family residential and the proposed additions will be consistent with the existing architecture to preserve the essential character of single-family use. Although two dwelling unit is encouraged on appropriate sites within the area, the project site does not meet the minimum site area of 7,500 square feet established by the Comprehensive Plan (Housing Element) and R-2 zoning regulations, to permit additional residential units. Given the site constraints, the project is generally consistent with the purpose of R-2 zoning regulations.

Variance Requests

As noted, the PTC's purview for this project is the proposed variance for height and side yard setback encroachment. Attachment B provides a table to illustrate the project's compliance with zoning standards.

Height Variance

The R-2 zoning regulation prohibits second floor additions on substandard lots and encourages expansion on the ground floor. One of the design options for this project is to allow a variance for lot coverage by placing the allowable expanded floor area on the ground floor. However, the subject property presents various site limitations for expansion on the ground floor.

One of these expansion limitations is the tree protection zone (TPZ) of a 35 feet radius from the two protected trees at the rear side of the property. The applicant had initially proposed an optimal TPZ of 42 foot in radius that left no room for ground floor expansion. Urban Forestry Department staff, in accordance to the guidelines set forth in the City's Tree Technical Manual, determined that a TPZ of 35

⁴ The Palo Alto Zoning Code is available online: http://www.amlegal.com/codes/client/palo-alto_ca

foot in radius would be appropriate for the preservation of the two protected trees. The City would typically allow a maximum of 25% infringement for a healthy tree. After considering prior impacts and existing intrusions to the root system within the TPZ area, the undisturbed area in this case is 27% (when typical practice is 75%). Staff determined the existing 27% of undisturbed area is crucial to maintain for the vitality of these trees. For the preservation of protected trees, staff supports the proposal to maximize lot coverage outside of the TPZ and construct the remaining amount of allowable floor area on the second floor with the request of a variance. The need to maintain the TPZ from further intrusions qualifies this project site as unique, which supports the findings for a variance.

Along with the vegetation constraints, the other design challenge is providing adequate driveway clearance for access to the existing rear detached garage. The unique lot shape and vegetation impose constraints to the configuration and the size of horizontal expansion on the ground floor within rear part of the buildable area.

As noted, the property is a substandard lot with a lot area and lot width that are less than the minimum lot requirement. The intent behind limiting development on a substandard lot to one-story development is to respect neighborhood character and scale, to mitigate privacy impacts and to preserve natural light for neighboring properties.

Neighborhood Character and Scale

The proposed exterior modifications and additions are in substantial compliance with the five Individual Review Guidelines for single-family homes. The primary goal of these guidelines is to promote new construction that is compatible with existing residential neighborhoods. As conditioned, the project will preserve the original architectural style and features by complying with the ten SOI standards. Unlike other substandard lots, this site offers reasonable space for a second story addition that would meet the floor area, lot coverage, height and daylight planes limitations for a typical two-story home in the R-2 zoning district.

Privacy Impact

The Individual Review process addresses the issue of privacy impacts. The proposed second story windows are small in size and their placement is above five-foot sill height on both left and right elevations. These design elements will reduce the opportunities for direct sight lines onto adjacent properties. In addition, existing landscaping offers visual buffer and limits views from the rear-facing windows onto neighboring properties.

Natural Light Preservation

The proposed second floor addition is rectangular and is set back from the first-floor wall planes, so that massing is not highly expressed from all sides. The second-floor addition will be built within the required side and rear daylight planes at a height of about 26 feet 8 inches. The existing building height is 18 feet and the height limit for two-story development in the R-2 zoning district is 30 feet. The proposed height is lower than some nearby homes on this block and is compatible in massing with the adjacent one-story home at 836 Kipling Street.

Side Yard Encroachment Variance

The existing main residence is a noncomplying facility with a wall on the west elevation that is located 2'-6" within the required six-foot side setback. The project will replace one window on this existing wall. This replacement will not exceed the thresholds contained within PAMC Chapter 18.70.100, therefore the noncomplying wall may remain. Additionally, the project includes an approximate six-foot horizontal

extension to this existing 40 foot 6 inches wall to the rear part of the home, which will not be visible from the street. The proposed extension will not decrease privacy and the scale is compatible with the existing homes. This request would normally fit within the specific limits set forth for Home Improvement Exception (HIE). This setback encroachment is part of the variance request, because the project will alter more than 75% of the existing walls, including siding and cladding, which makes the project not eligible to request for HIE.

Attachment D is the Director's decision with findings and conditions for approval of the Variance.

The variance findings in the code are as follows:

- (1) Because of special circumstances applicable to the subject property, including (but not limited to) size, shape, topography and surroundings, the strict application of the requirements and regulations prescribed in this title substantially deprives such property of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property. Special circumstances that are expressly excluded from consideration are:
 - (A) The personal circumstances of the property owner, and
 - (B) Any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.
- (2) The granting of the application shall not affect substantial compliance with the regulations or constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property, and
- (3) The granting of the application is consistent with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning), and
- (4) The granting of the application will not be detrimental or injurious to property or improvements in the vicinity, will not be detrimental to the public health, safety, general welfare, or convenience.

Environmental Review

The project is exempt from the provisions of the California Environmental Quality Act per CEQA Guidelines Section 15301(e) (Additions to existing structure).

Public Notification, Outreach & Comments

The Palo Alto Municipal Code requires notice of this public hearing be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the *Daily Post* on 2/14/2020, which is 12 days in advance of the meeting. Postcard mailing occurred on 2/12/2020, which is 14 days in advance of the meeting.

Public Comments

As of the writing of this report, staff received written letters from both the hearing requestor (Attachment E) and the applicant (Attachment F). As this is not an appeal of a Variance, but a request for hearing of an application, staff has not presented a section to summarize the hearing requestor's statement.

Alternative Actions

In addition to the recommended action, the PTC may recommend to the City Council:

1. Approve the project with modified findings or conditions;
2. Continue the project to a date (un)certain; or

3. Recommend project denial based on revised findings.

Report Author & Contact Information

Christy Fong, Project Planner
(408)340-5642 x 110
cfong@m-group.us

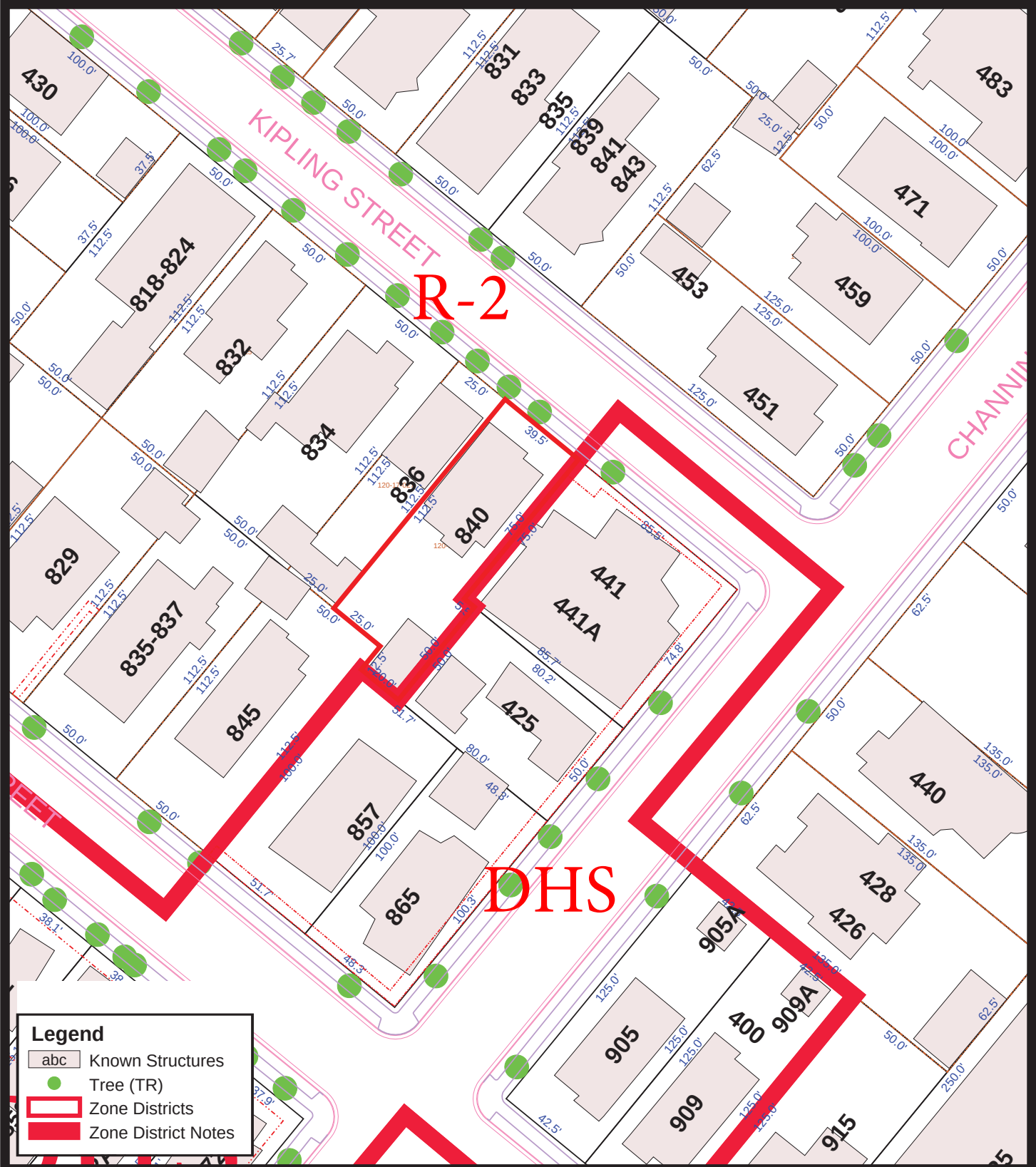
PTC⁵ Liaison & Contact Information

Rachael Tanner, Assistant Director
(650)329-2167
Rachael.Tanner@cityofpaloalto.org

Attachments:

- Attachment A: Location Map (PDF)
- Attachment B: Zoning Compliance Analysis (DOCX)
- Attachment C: Initial Public Comments and Applicant's Response Letters (PDF)
- Attachment D: Director's Tentative Approval Letter (PDF)
- Attachment E: Hearing Request Letter dated February 3, 2020 (PDF)
- Attachment F: Applicant Letter dated February 3, 2020 (PDF)

⁵ Emails may be sent directly to the PTC using the following address: planning.commission@cityofpaloalto.org

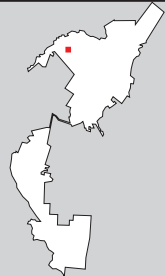


Legend

- abc Known Structures
- Tree (TR)
- ▭ Zone Districts
- ▭ Zone District Notes



The City of
Palo Alto



Location Map
840 Kipling Street

This map is a product of the
City of Palo Alto GIS



ATTACHMENT B
ZONING COMPLIANCE ANALYSIS
Development Standards for R-2 Zone District
840 Kipling Street / File No. 18PLN-00185

R-2 zone district	Zone District Standards	Existing	Proposed Project	Conformance
Lot Area	Min 6,000 sf	4,893 sf (81.55%)	4,893 sf (81.55%)	<u>Substandard</u> Less than 4,980 sf 83% of minimum lot size
Lot Width	Min 60'	39.5'	39.5'	<u>Substandard</u> Less than 50'
Lot Depth	Min 100'	112.5' with 12.5 ft extend in small portion	112.5' with 12.5 ft extend in small portion	Yes
Minimum Building setback				
Front yard	10'	12'	12'	Yes
Rear yard	20'	50'	45.5'	Yes
Interior side yard (right)	6'	3.5'	3.5'	<u>Variance Request</u> for approximately 6' horizontal extension
Interior side yard (left)	6'	8'	8'	Yes
Side daylight plane (side lot lines)				
Initial height (ft)	10	1/F roof ridge encroachment on both left and right sides	1/F roof ridge encroachment on both left and right sides	No change from existing
Angle (degrees)	45			
Front and Rear daylight plane (front and rear setback line)				
Initial height (ft)	16			Yes
Angle (degrees)	60			
Maximum site coverage				
Single Story	40% 1,957.2 sf	31.2% 1,528.4 sf	N/A	N/A
Multiple Story	35% 1,712.6 sf	31.2% 1,528.4 sf	35% 1,712.3 sf	Yes
Permitted area covered by patio or overhang	5% 244.7 sf	2.1% 103.29 sf	2.1% 103.29 sf	Yes
Maximum height	17' and 1 habitable floor for substandard lot; 30' for two story development	18'	26' – 8 ¼"	<u>Variance Request</u> for height and habitable floor
Maximum floor area ratio	45% 2,201.8 sf	31.2% 1,528.37 sf	45% 2,201.4 sf	Yes
Parking requirement	1 covered 1 uncovered	1 covered 1 uncovered	1 covered 1 uncovered	Yes

	Law Offices Of	
	Charles S. Bronitsky	
Telephone	533 Airport Blvd, Suite 328	Fax
(650) 918-5760	Burlingame, California 94010	(650) 649-2316
	www.bronitskylaw.com	

December 16, 2019

Via Email: Jonathan.Lait@CityofPaloAlto.org

Jonathan Lait, Director
City of Palo Alto
Planning & Community Environment
250 Hamilton Avenue
Palo Alto, CA 94301

Re: 840 Kipling Street - 18PLN-00185

Dear Jonathan:

Hopefully you remember me from when we worked together on the relocation of the New Mozart School of Music from its prior location at the Baptist Church to its new and current location on El Camino Real. My thanks again to you and your staff for working with us and helping to find and expedite a mutually beneficial solution.

I am writing today on behalf of Alexander Gubbens and Karen Han, owners of 441 Channing Avenue, in connection with the variance application submitted by the owners of 840 Kipling Street, their immediate neighbors. For a number of reasons, including those set forth below, we are asking that the City deny the variance application.

840 Kipling is zoned R-2, is a substandard lot, is part of the South of Forest Avenue Coordinated Area Plan Phase I ("SOFA I CAP") and has been determined to be an historic property by the Historic Resources Board ("HRB"). The property owners are seeking a variance to allow the construction of a 489 square foot second story addition.

Palo Alto Municipal Code § 18.10 contains the regulations that determine what can and cannot be built on 840 Kipling. Municipal Code § 18.10.040(a) provides that the minimum lot size for an R-2 zoned property is 6,000 square feet. The parcel at 840 Kipling is 4,893 square feet and is therefore a substandard lot under Municipal Code § 18.10.040(b). As a substandard lot the Municipal Code expressly provides that "[t]here shall be a limit of one habitable floor." Municipal Code § 18.10.040(b)(1)(B)(ii). Thus, the law in Palo Alto is clear that no second story is allowed on a substandard lot in the R-2 zone. In addition, the house at 840 Kipling is also only 5.5 feet away from its nearest neighbor at 836 Kipling. Municipal Code § 18.10.050 which allows for additional extensions into existing setback requirement, also has no provisions that would allow a

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structure with a height of 26 feet, 8.25 inches as is proposed in the plans submitted in this matter.

It also appears from the submitted topographic survey, Plan Sheet C.0, that there is ample room in the rear yard of the property to construct an addition that would comply with the “one habitable floor” limit for a substandard lot in the R-2 zone. Additional space can also be found in the front yard where the current porch area could be converted into habitable space. In fact, in early correspondence with the assigned planner, my clients were told that the applicants would be required to fully expand the first floor before the City would even consider a variance for a second-floor addition. It does not appear, however, that such a policy was actually applied in this case.

Turning to the issue of the requested variance, as a very experienced planner you are certainly aware that variances are very rare and require not only unusual but extraordinary circumstances to be granted. Frankly, having some thirty-three plus years of experience myself, I do not see the type of extraordinary circumstances required to approve a variance. In fact, the only thing that appears to be unusual about this property is that it is a substandard lot. That alone clearly should not be the basis for granting a variance, as it would render the Municipal Code requirements moot or worse, subject to the individual whim. As discussed above, the Municipal Code clearly states that in the R-2 zone only one habitable floor is allowed on a substandard lot and so the mere fact that the lot is substandard is already addressed and not sufficient by itself for the granting of a variance.

The only other unique aspect of 840 Kipling that I could see from the material provided are the heritage trees in the rear yard. What is not clear, however, is the extent of the tree protection zone, as it appears that there is sufficient space in the rear yard to extend the current single story into the rear yard without coming into the tree protection zone. Moreover, the two new homes across the street from my clients, at 400 Channing, appear to have been built very close to the existing heritage trees, in fact the rear structures on that property are only set back five feet from the rear property line despite the existence of heritage trees in that location. From the approved plans for the development of those homes it appears that the structure is about twenty-eight feet into the tree protection zone of what is a slightly larger tree. If the City is able to approve such construction at 400 Channing, then it should also be able to approve extending the single story at 840 Kipling further into its rear yard.

Other than the substandard lot, which should not in and of itself be a factor, and the heritage trees which could be addressed in the same manner as they were addressed in the project at 400 Channing, I see no other extraordinary circumstances that would justify the granting of a variance in this matter.

In an effort to see what has been done in similar situations, I performed a search on your

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Building Eye application for the term “variance.” The search, which goes back to January 1, 2014 revealed only nine instances in which the term was even used and after looking at the details of each of these nine instances I found none in which a variance was granted in a similar situation. In fact, in almost all of these instances the variance application was denied and none of them presented facts as contrary to the existing Municipal Code as those presented in this instance.

I also attempted to find the staff report as well as any prior staff reports or minutes from the HRB. I believe that 840 Kipling was the subject of an earlier decision by the HRB but was unable to locate that decision or the staff report. When I went to find the staff report for the December 12, 2019 HRB meeting on the property, all I was able to locate was the agenda, no staff report was available and given the recency of the meeting, no minutes were available either. As these reports and minutes may be important to an overall understanding of the property and its development, I would ask that they be provided and that we be given time to review and submit comments.

Finally, it is my understanding that since 840 Kipling is located in the SOFA I CAP, I reviewed the 172-page report. It is my understanding that any new development in the area governed by that Report should be evaluated as to whether the proposed development complies with the policies set forth therein. In fact, in earlier correspondence with the previously assigned planner, my clients were told that such an analysis was going to be undertaken. If it has, then I would also request a copy of that as well.

Having reviewed the SOFA I CAP Report myself it appears to me that the proposed addition at 840 Kipling does not comply with the policies established. The Report, in Chapter II states:

“The livability and the walkability of the neighborhood will be preserved and enhanced through the provision of open space with a proposed neighborhood park, through the maintenance of pedestrian scale urban design improvements, the calming of traffic on area streets, and the creation of new housing for a variety of household types. The area’s traditional grid street pattern, its historical buildings, its mature tree canopy, and its mix of land uses will also be preserved.”

“Land vacated by PAMF adjacent to existing lower density residential uses on Channing Avenue between Waverley and Kipling Street will be developed with detached single family homes on small lots (typically 5,000 square feet) consistent with the existing development pattern of these neighborhoods. The Plan allows increased floor area ratios (FAR) as incentives to construct second units as accessory cottages in the rear of the property, usually beside or above the garage, or attached second units as found in many older Palo Alto neighborhoods. These second units will expand the range of available housing types and will increase the total number of housing units in the area.”

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Housing and a mix of housing types seems a common theme of the Report. “The Plan has also addressed the City’s desire to create housing for a variety of users beyond the traditional single family neighborhood. **This interest has been furthered by the desire to maintain compatibility of land uses and density with the surroundings and has resulted in the plan facilitating a range of housing types.** These include moderately-sized detached single family homes on small lots with or without rear cottages, multiple-family attached apartments and/or condominiums, and rental housing units in mixed use projects, along with provisions for the inclusion of special housing types such as affordable housing, senior housing, or co-housing.” Chapter III(C) (emphasis added). This is specifically addressed in Policy H-2 which calls for lower density housing in the area where 840 Kipling is located with increased density closer to downtown and Alma Street.

This policy of preserving neighborhoods and having a broad variety of residential unit types would be violated by allowing the variance requested by the applicant. One need not look very far to see that small detached “starter homes” like what is currently located at 840 Kipling are being developed into larger, more expensive and less affordable homes at an alarming rate. Allowing the type of development requested by the variance application in this case will only serve to reduce the pool of “starter homes” in Palo Alto by yet one more, making it difficult, if not impossible for young people and young families to own anything other than a condominium. A pool of “starter homes” is essential for diversity and opportunity and from my reading of the SOFA I CAP Report, a clear and strong policy adopted by the City of Palo Alto. At the very least that issue should be evaluated, and a determination made as to whether yet one more overbuilt lot is a better community option than stabilizing the already limited pool of “starter homes.”

In general, I see very little here that would support the granting of a variance in this instance. There is nothing exceptional about the particular lot or situation and the neighborhood is already much denser than current zoning requirements would allow. Making it even more dense by granting a variance for no compelling reason is, in my opinion, poor policy. It also makes it problematic for other residents who select particular properties to purchase understanding what can and what cannot be built in adjacent areas. Allowing what is prohibited by the current law be built by the granting of a variance, undermines these expectations and creates problems where none would exist by the simple application of the existing laws.

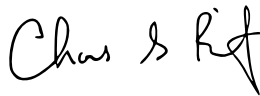
Thank you for reading and considering our concerns. I am currently away but back on December 23 if you think that perhaps meeting with me, with or without my clients, would be beneficial.

Jonathan Lait, Director

December 16, 2019

Page 5

Thank you,

A handwritten signature in black ink, appearing to read "Chas S. Bronitsky". The signature is fluid and cursive, with the first name "Chas" and last name "Bronitsky" clearly distinguishable.

Charles S. Bronitsky

Attorney at Law

Fong, Christy

From: Stephen Reyna <stephencreyna@gmail.com>
Sent: Monday, December 30, 2019 6:46 PM
To: christylmfong@gmail.com
Cc: Jonathan.Lait@cityofpaloalto.org; Steve Reyna; Martin Bernstein
Subject: Response to Charles Bronitsky's letter of December 16, 2019 concerning the 840 Kipling Variance Application

Dear Jonathan and Christy,

Thank you for sharing the letter dated December 16, 2019 you've received from Charles Bronitsky, the attorney representing the owners of 441 Channing Avenue. Mr. Bronitsky is requesting that the City deny our variance application for a second habitable floor at 840 Kipling Street. We are writing at this time as a response to Mr. Bronitsky's letter and the issues he brings up with our application for a variance for a modest second story addition.

Mr. Bronitsky repeatedly asserts that he does not see the conditions necessary to support a variance application. However, in looking over this letter, it is apparent that Mr. Bronitsky is not familiar with our proposed project, the extraordinary conditions that affect 840 Kipling, the SOFA CAP, or the historic rehabilitation standards.

As per City of Palo Alto Planning Department website "A Variance is an entitlement granted to property owners to provide relief from certain zoning regulations when a property has special physical constraints, or when the zoning regulations would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the same vicinity and zoning district." Any property owner in any zoning district has the right to apply for a variance if the necessary findings set forth by Palo Alto Municipal Code can be made.

We believe that we do have a strong case for making the findings that support the variance application for 840 Kipling and that we have worked very hard to meet the City's requirements. We had a preliminary meeting to review feasibility of a variance before we started our project. From then on, we acted on and satisfied every requirement raised by the Planning department as a necessary precondition before they would consider our variance request.

These include:

1. Expanding the first floor to the Site Coverage Limit before putting the remaining FAR on the second floor,
2. Moving the second story as far back as possible and away from the street view,
3. Lowering the height,
4. Retaining the historic cross-gable roof and some of the original windows and doors to satisfy the Secretary of the Interior's Standards,
5. Getting an arborist report that shows the impact of all structures around the protected trees

We believe we have fully complied with all the requirements of the PAMC in our application.

We would like to address specific issues raised and claims made by Mr. Bronitsky one by one.

SUBSTANDARD LOT

In the last paragraph of the first page, Mr. Bronitsky cites Municipal Code 18.10.40 as the basis for 840 Kipling being considered a substandard lot and, therefore, not allowed to have a second habitable floor. However, we are allowed to apply for a variance, as any property owner is. And, we are allowed to have a second habitable floor if we can meet the necessary findings for a variance, as we believe we can.

840 Kipling St. is effectively a conforming 5005.5 sq.ft. lot. As such, it would not have required a variance for a second story. A small 112.5 sq.ft. easement contributes to making 840 Kipling an effectively conforming lot combined with the

Attachment C

4893 sq.ft. of the existing lot. The easement is exclusive use, exists in perpetuity, and can be found in the County Records. This is a significant special condition that contributes to the findings for a variance.

We would note that the owners of 441 Channing Ave are well aware of the existence of this easement, since it was the subject of multiple conversations between us while we were exploring the possibilities of an addition, and prior to our engaging an architect.

SETBACK ENCROACHMENT

On the last paragraph of page 1, Mr. Bronitsky also cites Municipal Code 18.10.050 related to allowed encroachments into setbacks and then claims that a proposed structure with a height of 26 feet 8.25 inches is not permitted as an encroachment.

There are no structures of that height located in any setbacks, front, rear, or side. The ridgeline of the second story addition is the only part of the house with a height of 26 feet 8.25 inches. This ridgeline is located 20 feet from the shared property line with 836 Kipling. The proposed second story addition is located entirely within the Daylight Plane with not even the eaves extending through the plane. It is located nowhere near any setbacks.

FIRST FLOOR EXTENSION AND TREE PROTECTION ZONE

In the first paragraph of page 2, Mr. Bronitsky refers to the survey on Plan Sheet C.0 stating that there appears to be ample room to extend into the rear yard. He also questions whether the applicants were actually asked by the City to fully expand the first floor before considering a second story variance, as his clients were told by the assigned planner. In the third paragraph of page 2, Mr. Bronitsky claims that the extent of the Tree Protection Zone is not clear and there appears to be sufficient room to extend the current single story into the rear yard without coming into the Tree Protection Zone.

Yes, we have been asked by the City to expand the first floor to the Site Coverage Limit before a second story variance would be considered. We have worked very hard to meet the City's requirements. Comparing our first plan submission to the current plan set, it can be seen that we have taken 151 sq.ft. from the second story addition and applied it to the first story. We have extended the first story 4'-6" towards the rear to maximize Lot Coverage up to the 35% limit for R-2 zoning (not counting the front porch) as required by Planning. We have also reduced the height of the second story addition by 1'-2" as compared to our first plan set.

The Tree Protection Zone for the two protected redwood trees in the rear of our property is not shown on the survey on Plan Sheet C.0, but is clearly identified on Plan Sheet A1.0. It can be seen that the first floor comes very close to the TPZ boundary.

Planning has been very consistent about the TPZ requirements with respect to the protected trees on 840 Kipling. For a given Tree Protection Zone as defined by the Tree Ordinance, Planning allows an intrusion of up to 25% of the area of the TPZ. As clearly documented on Plan Sheet T2, the TPZ area of the protected trees on 840 Kipling are already impacted by 73%, far in excess of the allowed 25% intrusion. The Forestry Department does not support additional intrusion into the TPZ.

Mr. Bronitsky mentions new construction at 400 Channing Avenue, where homes have been built very close to existing heritage trees, and that if the city can approve something like 400 Channing, it should be able to approve something similar for 840 Kipling to extend the first floor further into its rear yard.

We've seen the construction at 400 Channing and the proximity of the structures to the trees there. It does not match the clear direction given to us by the City. We don't know the TPZ conditions of 400 Channing, but we don't think it's appropriate to be asked to replicate what looks to be a problematic situation. Every application should be decided upon based on its own merits.

CONVERSION OF THE FRONT PORCH TO HABITABLE SPACE

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In the first paragraph of page 2, Mr. Bronitsky suggests that the front porch can be converted into additional habitable space. Preservation of what can be seen from the public right of way and, in particular, the front façade, is one of the important objectives of the Secretary of Interior Standards for Rehabilitation. The front porch has been in its current form since before 1924. Converting this porch into habitable space would be in direct conflict with the Standards.

We have worked very hard to be in compliance with the Secretary of Interior Standards and our current plans meet 10 out of the 10 criteria in the Standards, according to Page & Turnbull, the city's historic consultant. The HRB also recently gave us a unanimous vote of approval in the December 12, 2019 hearing. Mr. Bronitsky's suggestion is in complete conflict with how an historic resource should be rehabilitated.

COMPLIANCE WITH THE SOFA 1 CAP

Starting with the third paragraph of page 3 and continuing through the second paragraph of page 4, Mr. Bronitsky quotes some passages from SOFA 1 CAP Overview Chapter II (A) Land Use Pattern Transition, a passage from Policies Chapter III (C) Housing, and refers to policy H-2 from Chapter III (C)(1) Housing Quantity and Density. Mr. Bronitsky then cites these quotes as evidence that the proposed second story addition is not in compliance with the SOFA 1 CAP. The problem, though, is that the policies cited refer to the general vision for new development on the land vacated by PAMF and to the establishment of new lots and associated zoning that also includes 441 Channing, not to housing that existed prior to the SOFA CAP.

- The first paragraph he cites, from Chapter II (A) Land Use Pattern Transition, includes the text “and **the creation of new housing** for a variety of household types.”, emphasis added.
- The second paragraph he cites, from Chapter II (A)(i) Land Use Pattern Transition, starts with the sentence “**Land vacated by PAMF adjacent to existing lower density residential uses on Channing Avenue between Waverley and Kipling Street** will be developed with detached single family homes on small lots (typically 5,000 square feet) consistent with the existing development pattern of these neighborhoods.”, emphasis added. The Detached Single Family Homes on Small Lots referred to is the DHS zoning introduced as a part of the SOFA CAP. The land vacated by PAMF referred to in the quote is the former PAMF staff parking lot that used to be adjacent to 840 Kipling. This land was assigned DHS zoning, and now includes 441 Channing.
- The third paragraph he cites, from Chapter III (C) Housing, also contains the text “These include moderately sized **detached single family homes on small lots with or without rear cottages**,”, emphasis added. This is another direct reference to DHS zoning.
- Policy H-2, cited by Mr. Bronitsky, is located in SOFA CAP Chapter III (C)(1) Housing Quantity and Density. It follows Policy H-1 which states: “Provide up to 300 or more units of **new housing** throughout the Plan Area, with residential use as the predominant land use **for the former PAMF sites**.”, emphasis added. The general transition in housing density mentioned in Policy H-2 starting from the corner where 840 Kipling is located refers to the DHS zoned single family homes. The increased density closer to downtown and Alma Street refers to Multi-family condominiums at Homer and Bryant and Channing and Bryant streets. The fact that Policy H-2 has a portion of it marked “To Be Implemented in Phase 2” also highlights how it refers to new housing introduced by SOFA.

We've lived in our home since 1998 and are very familiar with the SOFA CAP as we were one of the most affected pre-existing properties in the SOFA Plan Area by the much denser development that SOFA CAP introduced. SOFA CAP policies included more and denser new housing. It is clear that the intent of the policies Mr. Bronitsky cited was actually to establish new single family residential properties with DHS zoning on former PAMF sites. 441 Channing is one of these lots. Mr. Bronitsky's argument that 840 Kipling's variance application conflicts with these policies stands in contradiction with their clear intent as documented in the SOFA CAP.

The treatment of existing zoning designations is also clearly defined on page 83 of the SOFA CAP where it is stated that “**Development** within portions of the Plan Area **which retain their existing land use and zoning designations** will follow the review process established by the PAMC and **will not be subject to the policies and programs included in the Coordinated Area Plan**”, emphasis added. The policies that Mr. Bronitsky mentions do not apply to 840 Kipling, which

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was and is zoned R-2. There is no conflict between the 840 Kipling variance application and the broader policies and intent of the SOFA CAP.

“OVERBUILT” & “STARTER HOMES”

In the second paragraph on page 4, after citing various quotes from the SOFA 1 CAP, Mr. Bronitsky then goes on to discuss a general housing issue about unaffordable “starter homes” in Palo Alto, asserts that the 840 Kipling variance application would negatively impact the available pool of “starter homes”, and seeks to characterize the end result of the 840 Kipling variance as “yet one more overbuilt lot”.

840 Kipling St. is zoned R-2 and has a maximum allowed FAR of 0.45. With this application, we are seeking to be able to use the maximum allowed FAR. We are adding a total of 673 sq.ft. split between first and second stories. This project, by any reasonable measure, is modest and limited in scope. The primary issue that Mr. Bronitsky and his clients have focused on is the 489 sq.ft. second story addition.

As shown on the Streetscape, on Plan Sheet A2.0, the second story addition is limited and set into the mass of the house to minimize impact on the street and neighbors. It is clear that 840 Kipling with its proposed addition fits well within the scale and character of the existing neighborhood, and has less height and massing than some of those original buildings.

441 Channing is zoned DHS (Detached Houses on Small Lots), which is a denser zoning designation introduced by the SOFA CAP as a part of redeveloping the former PAMF sites. By having a detached accessory unit, 441 Channing is allowed a maximum FAR of 0.65, as opposed to a maximum FAR of 0.45 for R-2 zoned 840 Kipling. DHS has no Site Coverage Limit as opposed to a Site Coverage Limit of 0.35 for R-2. According to the zoning regulation, DHS is supposed to have a maximum lot size of 5000 sq.ft. 441 Channing is actually the single largest residential DHS lot in the SOFA Plan Area with 6411 sq.ft. and is fully built out to 0.65 FAR and a height of 29 feet.

With a built out FAR of 0.65 on the single largest DHS lot in the SOFA Plan Area, the scale and massing of 441 Channing dwarfs the properties around it. 840 Kipling exists as a transition zone between the intense scale and density of 441 Channing on the one side to the less dense R-2 homes along Kipling on the other. Being a transition zone is actually another special condition of the property that helps support the findings for a second story variance for 840 Kipling.

It is impossible to understand how Mr. Bronitsky could reasonably argue that a modest 489 sq.ft. second story addition to 840 Kipling that fits well within the existing neighborhood scale and character could possibly be considered “overbuilt” and a threat to the affordability of “starter homes”.

Mr. Bronitsky also contradicts his earlier assertions that 840 Kipling can expand on the first floor, just not the second floor. In either case, 840 Kipling would expand and become, in Mr. Bronitsky’s words, “yet one more overbuilt lot”. This highlights that the affordability of “starter homes” is not really the focus of the arguments made against the application for the second story variance.

CONCLUSION

Mr. Bronitsky repeatedly asserts in his letter that he sees nothing in the application that would warrant the granting of a variance. And yet, throughout his letter, Mr. Bronitsky has shown that he is not familiar with the 840 Kipling plan details, the many special circumstances of the property that support findings for the variance, the policy and code implications of some of his claims and suggestions as they apply to 840 Kipling, as well as the context and meaning for various policies he has referred to while seeking the denial of the application. He also contradicts himself as he makes some arguments.

We believe that we have a strong case, with a plan and findings that satisfy the requirements for granting a variance for a second story. We have worked diligently to meet the City’s requirements and the requirements of the Secretary of Interior Standards for Rehabilitation of Historic Resources. From the beginning, our goal has been a modest addition to

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our house that maintains its existing historic character and fits in well with the existing neighborhood. We believe we have achieved that goal. We engaged in neighbor outreach from the beginning, including outreach to the owners of 441 Channing before we even hired an architect for our project. All the other neighbors support our project, including 836 Kipling, a single-story house that is separated from ours by only 5.5 feet. The owners of 441 Channing are the lone exception and they have not offered any issue of substance against the granting of the variance.

We ask that you support our application and grant a variance for a second story for 840 Kipling. Thank you for your consideration.

Regards,

Steve Reyna & Aysen Kutlu

Dear Christy,

We were very saddened to hear about the continuing opposition to our project by the owners of 441 Channing Street, Sander Gubbens & Karen Han. Even before we hired an architect, we made efforts at outreach as good neighbors. As we were moving through the design and variance process, we made additional efforts, both direct and through our architect, to hear their concerns, to share our evolving plans, and to share our efforts to accommodate their concerns as best we could. Most efforts were rejected. Their position was very simple and communicated directly to us: They did not want a second story to interfere with their views across our property.

Before getting into comments about the specific issues mentioned in the emails from Mr. Gubbens & Ms. Han, we would like to highlight that the owners of 441 Channing are a minority of one. Other immediate neighbors which share a property line with 840 Kipling have sent in letters of support for our project, as well as the property owner directly across the street from 840 Kipling (453 Channing), and Kipling neighbors on the same block face. This includes the owners of 836 Kipling, whose house is only 5.5' away from our house at 840 Kipling. We have their full support.

In the various letters to the city, Mr. Gubbens & Ms. Han repeatedly highlighted the following concerns:

- Loss of views
- Loss of privacy
- Loss of light
- 840 Kipling has "no right to a second story in violation of building codes"
- 840 Kipling has "no right to take value from our property [441 Channing] for the benefit of theirs"

We would like to address these one by one.

LOSS OF VIEWS

- When we purchased our house at 840 Kipling in 1998, the lot adjacent to our property was the staff parking lot for PAMF. This lot was redeveloped as a part of the SOFA 1 by Summerhill Homes. At that time, four 40+ foot Canary Island pine trees existed along the fence line for the portion now occupied by 441 Channing.
- Because of issues related to privacy and compatibility, a Director's Hearing was held for SOFA I Block E, which includes 441 Channing, on March 8, 2001. One of the decisions made by Ed Gawf, the Director of Planning at that time, was that retention of those four Canary Island pine trees was a condition of approval for 441 Channing in order to provide screening for privacy for our house.
- In 2007, Mr. Gubbens and Ms. Han became the second owners of 441 Channing. Those four 40+ foot pine trees were present when they purchased their house.
- In 2009, Mr. Gubbens approached us asking if they can remove the pine trees because they were a maintenance issue for them. They had become a maintenance issue for us as well, so we agreed to let him remove the pine trees and replace them with new screening trees. It was at this point that Mr. Gubbens was first able to enjoy the view across 840 Kipling.
- With the removal of the pine trees, our house at 840 Kipling suffered a significant loss of privacy from the second story windows of 441 Channing. They had views into both bedrooms, the bathroom, and the living room. As good neighbors, we were willing to allow time for the trees to grow and restore the privacy screen. After 10 years, 840 Kipling still suffers the same loss of privacy in all mentioned rooms. The replacement trees are currently providing little to no privacy

screening. The replacement trees never grew tall enough or filled in enough to provide screening.

- In their objection to this project, Mr. Gubbens & Ms. Han insist that the city should not let us build a second story because that would deprive them of their views across our property at 840 Kipling from their second story windows. It seems very disingenuous for Mr. Gubbens & Ms. Han to insist on retaining views across 840 Kipling that they themselves created by cutting down the required screening trees between 441 Channing and 840 Kipling.

LOSS OF PRIVACY

- Mr. Gubbens & Ms. Han claimed at one point about a loss of privacy from the proposed project.
- Our project has passed Individual Review, for which privacy between neighbors is a major criteria. The two second story windows on the East Side facing 441 Channing have a sill height of 5'.
- As mentioned above, though, we have suffered a major loss of privacy in our home when Mr. Gubbens & Ms. Han removed the preexisting screening trees and their replacement trees still haven't provided any meaningful screening after 10 years. It is completely within Mr. Gubbens' & Ms. Han's power to resolve both their future concerns and our current issues related to loss of privacy by providing appropriate screening trees to replace the required screening trees that they removed.

LOSS OF LIGHT

- Mr. Gubbens & Ms. Han claim a loss of light from the proposed project.
- The proposed second story addition fits entirely within the daylight plane. Not even the eaves are projecting through the plane.
- Our addition fully meets the zoning requirements that protect a neighbor's available light.
- As a side note, the house at 441 Channing is located about 37 feet away from our house at 840 Kipling.

840 KIPLING HAS "NO RIGHT TO A SECOND STORY IN VIOLATION OF BUILDING CODES"

- Mr. Gubbens & Ms. Han have made this claim multiple times.
- We are requesting a Variance for a second story addition. A Variance is a legal option available to any homeowner. We are not violating any codes by applying for a Variance. We are in fact operating within the municipal code by doing so. We have a unique situation, a physical condition, related to our property such that the strict application of the zoning creates an unnecessary hardship. The Variance is the only option that will enable us to use the allowed FAR to make a modest addition to our house. Our application is in harmony with the general intent and purposes of the code.
- City Planner, Claire Hodgkins, also informed Mr. Gubbens by email on June 26, 2018, that the Variance process is a part of the municipal code and that we have the right to apply for one. He knows that we are following a legal process with our application.

840 KIPLING HAS “NO RIGHT TO TAKE VALUE FROM OUR PROPERTY FOR THE BENEFIT OF THEIRS”

- Mr. Gubbens & Ms. Han have made this claim multiple times.
- When Summerhill Homes redeveloped the PAMF parking lot next to 840 Kipling, they built four large two-story houses with granny unit-garage combinations on two sides of our property. These houses were zoned DHS, a much denser zoning than the R-2 zoning of 840 Kipling. Our house, which used to have views of green on the parking lot sides is now surrounded by large dense construction. Despite that, the property value of 840 Kipling did not suffer, rather it increased.
- It is hard to imagine that a modest addition to 840 Kipling, which will increase its property value, will do anything other than increase the property values for the houses around it, including 441 Channing.

Thank you for your consideration of our comments.

Regards,

-Steve Reyna & Aysen Kutlu

840 Kipling
message

Steve Pierce <pierce@zanemac.com>

Wed, Dec 11, 2019 at 8:10 PM

o: christyfmfong@gmail.com

cc: AysenKutlu <aysenkutlu@gmail.com>, Martin Bernstein <martinbernstein617@gmail.com>, Stephen Reyna
stephencreyna@gmail.com>

Hi Christy,

I own the property at the corner of Kipling and Channing, adjacent to 840 Kipling. I met with Aysen and Steve and reviewed their plans and fully support the addition to their home. I believe it will be an enhancement of the neighborhood.

Most importantly, I believe it to be an addition that does not compromise the historic character of the home. I am quite sensitive to respectful treatment of historic homes. My home on Channing was built in 1900 and we own two homes that are on the National Register that we cherish and seek to be exemplary care takers.

Steve

Z

ZANE

STEVE PIERCE

Real Estate Advisor & Broker

ZANE MACGREGORReal Estate Advisors & Brokers 621 High Street Palo Alto CA 94301
cell 650 533 7006 main 650 324 9900 fax 650 323 5431 zanemac.com

variance 840 Kipling

1 message

Bill Cane <b_cane@yahoo.com>
To: christy <christylmfong@gmail.com>

Tue, Dec 10, 2019 at 11:01 PM

Dear Ms Fong,

I have owned and occupied my house at 832 Kipling Street since 1995, two houses north of 840 Kipling .I have reviewed the plans for the remodel of 840 Kipling and am in full support of granting the variance for the project to proceed. In my opinion, the project is modest in scope and will enhance the value of my property as well as other adjoining properties.

Please feel free to contact me if you have any questions.

Sincerely,

William B. Cane

832 Kipling Street
Palo Alto, CA 94301
650-906-9284

File Number 18PLN-00185 / 840 Kipling Street

1 message

Don Jackson <dcj@clark-communications.com>
To: christylmfong@gmail.com
Cc: "Darlene E. Yaplee" <darlene.yaplee@gmail.com>

Tue, Dec 10, 2019 at 7:47 PM

Ms Fong,

We own (and reside at) the residence at 845 Waverley Street, we share a back yard property line with 840 Kipling Street, thus we are adjacent neighbors.

We have reviewed the proposed project plans, and we fully support this plan.

Best regards,

Don Jackson
Mobile: +1.408.348.4842

Darlene Yaplee

845 Waverley Street
Palo Alto, CA. 94301

----- Forwarded message -----

From: Don Jackson <dcj@clark-communications.com>
To: claire.hodgkins@cityofpaloalto.org
Cc: "Darlene E. Yaplee" <darlene.yaplee@gmail.com>
Bcc: aksr@earthlink.net
Date: Wed, 4 Jul 2018 17:37:00 -0700
Subject: File Number 18PLN-00185 / 840 Kipling Street

Ms Hodgkins,

We own (and reside at) the residence at 845 Waverley Street, we share a back yard property line with 840 Kipling Street, thus we are adjacent neighbors.

We have reviewed the project plans, and we fully support the "Request for Variance and Individual Review to Allow for a second-story addition".

Best regards,

Don Jackson
Mobile: +1.408.348.4842

Darlene Yaplee

845 Waverley Street
Palo Alto, CA. 94301



Attachment C

Christy Fong <christylmfong@gmail.com>

840 Kipling Street

1 message

Libby Jones <libbyjones3@gmail.com>

To: Christylmfong@gmail.com

Tue, Dec 10, 2019 at 3:23 PM

Dear Christy,

My husband, Kevin Morris, and I live at [836 Kipling Street](#) in downtown Palo Alto. Our next-door neighbors, Aysen and Steve Reyna, at 840 Kipling Street have proposed plans for an expansion of their house (File # 18PLN-00185).

We just wanted to write and let you know that we fully support their proposed plans. They brought us into the discussion of their plans years ago and have been incredibly amenable and considerate of our wishes. We find no objection to their proposal. We're happy to discuss further if need-be.

Many thanks,

~Libby and Kevin Morris



Proposed project at 840 Kipling St

Steven Chanin <steven_chanin@me.com>
To: christylmfong@gmail.com

Tue, Dec 10, 2019 at 9:11 AM

Ms Fong,

Hello. My wife and I own and live at 857 Waverley St. The back of our house is diagonal from 840 Kipling St.

It is our understanding that the proposed project at 840 Kipling is up a review of whether it satisfies the standards for historic rehabilitation.

We're writing to comment on the project and express our support for any variances/permissions needed to allow the the construction of a second story addition. Our perspective is that the neighborhood benefits from residents investing in the improvement and updating of housing.

I'm not sure if this is relevant to the historical review, but from prior conversations with the owner of 840, it sounds like the substandard parcel classification is extremely close to the cutoff, and would be over that cutoff if the easement along the driveway were considered. From our perspective, that sounds "close enough" for the city and neighbors to be flexible and support the variance.

Thanks,
Steve

Steven Chanin
steven_chanin@alum.mit.edu
(415) 377-7503

Re: 840 Kipling St, file number 18PLN-00185

1 message

Sander Gubbens <sgubbens@yahoo.com>
To: Christy Fong <christylmfong@gmail.com>
Cc: Karen Han <karenfhw@yahoo.com>

Mon, Dec 2, 2019 at 9:36 PM

Dear Christy,

Thanks for the introduction and for this information. We are not sure if you know the full history of this project and have reviewed all prior correspondence which even predates the building application. Please do so if you have not. I can provide you with all past correspondence if necessary, just let me know.

We are still very much against this second story addition and have expressed this repeatedly and consistently. Adding a second story to 840 Kipling will take away our views and light and directly lower our enjoyment and the value of our property. Allowing this project is allowing enjoyment and value to be taken from one property for the benefit of another. We were never given a reason by the city as to why this project should be allowed to proceed. There is no reason why it should. There is no economic hardship, no danger of any kind. Why is the city supporting this process for a second story variance in direct opposition to the very early and very clear opposition of the property's immediate neighbor?

As we have stated multiple times before, we would support our neighbors extending their property on the first floor as we believe their neighbors on the other side are doing. The argument that this cannot be done because of a tree protection zone is demonstrably arbitrary and will not stand scrutiny. 400 Channing at the corner with Waverley was just allowed to build a larger structure within feet of a similar sized redwood tree.

If the tree protection zone argument holds, which it should not, then unfortunately our neighbors cannot expand their property as they desire. They should have known this limitation when they bought their property. They have no right to a second story in violation of building codes and have no right to take value from our property for the benefit of theirs.

By now we can only conclude that all of our arguments have fallen on deaf ears and that the city has all along been siding with our neighbors in the preparation of a grant for a variance which seems only a formality by now. Are we wrong?

We will not attend the public review. We have reached out to the city for years and should have been invited for a meeting years ago. Please inform us ASAP what our rights are. Given that we have not been able to make any progress on this with the city we may now need to go to court to defend the enjoyment and value of our property. We hope it does not have to come to that but are prepared to do so.

Best regards,

Sander Gubbens and Karen Han

On Nov 10, 2019, at 2:04 PM, Christy Fong <christylmfong@gmail.com> wrote:

Hi Sander,

I haven't formally introduce myself yet. I am Christy Fong, the current project planner for 840 Kipling Street. I would like to provide you with an update on the project. Since Claire's last email, the applicant has revised the plan to include details that are required to complete the application. Below is the link to the resubmitted plan. This design has been analyzed by the City's historic architect and was determined to be consistent with the Secretary of the Interiors Standards for Rehabilitation. The project is proposed to be presented to the Historic Resources Board (HRB) with a tentative hearing date of December 12, 2019. Public notice for the HRB meeting will be sent out as the date approaches.

Should you have any questions, please do not hesitate to contact me.

 [PDF 840 KIPLING DWGS.pdf](#)

Regards,
Christy

On Sun, Sep 8, 2019 at 8:38 AM Hodgkins, Claire <Claire.Hodgkins@cityofpaloalto.org> wrote:

Good morning,

Attachment C

Sorry for the brief delay in getting back to you on this. Friday was actually my last day in the office before starting maternity leave. The applicant actually resubmitted plans this past week—they have had very long delays between each submittal (appx 5-7 months between each submittal). I did not have a chance to review this most recent plan set before starting leave so these plans will be reviewed by another planner before a decision is issued.

The city has been working with the applicant to determine whether there is a path forward for this project. The city does believe that the site is unique in that there are protected redwoods at the rear of the property, that the house is eligible for the California Register of Historic Resources, and that the lot is substandard.

That said, the applicant was asked to revise their plans to add as much square footage on the ground floor as feasible while still maintaining protection for the tree (reducing the sf of any proposed second floor), the project must meet the Secretary of the Interior's Standard for Rehabilitation in order to ensure that the revised design does not affect the historic status of the resource, and the project is still being reviewed to determine whether the project meets the Individual Review Guidelines.

The revised plans that came in this week are being reviewed by the project planner, the city's architect, the City's contract historic architect, and the city's urban forestry division to determine whether these requirements have been met in the revised plans.

Christy Fong, one of our contract planners, will be taking over as the project planner for this project with support from Amy French who oversees the City's historic program. They are both cc'd on this e-mail so please communicate with them moving forward. I've asked them to keep in touch with you regarding the status of this project as it moves forward.

I'm not sure what was proposed at 400 Waverley (I think you are maybe referencing a project at 400 Channing) but please note that with respect to trees, the level of impact that the arborist believes can be sustained by a tree is dependent on a number of factors. These include but are not limited to the health of the tree, the species of tree, the location of major roots, the type of construction proposed, and previous impacts sustained by the tree/amount of construction currently within the root zone of the tree. So our arborists are weighing a variety of factors in making a reasoned determination about the project's potential impacts on the tree.

I'm sending the revised plans to you via wetransfer due to file size so you have the latest version.

Regards,

Claire

From: Sander Gubbens [mailto:sgubbens@yahoo.com]
Sent: Wednesday, September 04, 2019 2:54 PM
To: Hodgkins, Claire
Cc: Karen Han
Subject: Re: 840 Kipling St, file number 18PLN-00185

CAUTION: This email originated from outside of the organization. Be cautious of opening attachments and clicking on links.

Hi Claire,

It has been a while. Can you give us an update on this please?

Regarding 1 below, the new home across the street from us (400 Waverley) does not follow the same rules protecting the redwoods that are being applied to 840 Kipling. The application of these rules seem arbitrary and self serving.

Thanks,

Sander

On Oct 9, 2018, at 1:56 PM, Hodgkins, Claire <Claire.Hodgkins@cityofpaloalto.org> wrote:

Morning Sander,

The City is still considering the request for a variance based on the fact that there are still two protected redwood trees at the rear of this property and the fact that it was previously determined by the HRB to be historic.

However, what I've told the applicant at this time is that they need to do two things before we would consider a variance:

- 1) They must build out their first floor to the maximum extent of their lot coverage allowance. Our arborist believes that building out to the maximum allowable lot coverage could be done without significantly impacting the trees at the rear. Only then would we consider a second story variance for the remaining area that was not built out on the first floor. Note that we are not pushing to extend the first floor beyond the maximum allowable lot coverage given the existing protected redwoods at the rear.
- 2) They need to design the project to be consistent with the Secretary of the Interiors Standards for Rehabilitation; which will then need to be reviewed by our Historic Architect to determine consistency with the standards (we will be contracting out for that historic review).

We've had a lot of back and forth with the applicant on these two points but based on my last conversation with them I'm expecting that their resubmittal will address these two requests that I've outlined. Realistically I assume that the historic review may have some back and forth so I think we are still a few months out from issuing any decision. I have not received revised plans yet so I'm happy to let you know once I do receive those.

Regards,
Claire

From: sgubbens [mailto:sgubbens@yahoo.com]
Sent: Friday, October 05, 2018 12:28 PM
To: Hodgkins, Claire
Cc: Karen Han
Subject: Re: 840 Kipling St, file number 18PLN-00185

Dear Claire,

Can you give us an update on this?

There used to be a very large redwood tree located in the neighbor's backyard to the right of 840 Kipling. That was mentioned by the owners of 840 Kipling as the reason that they could not extend there property backwards instead of adding a second story. That redwood tree has recently been removed by that neighbor so that argument no longer holds.

We still believe that extending the property backwards may be the best solution for all involved.

Best regards,

Sander

On Monday, July 2, 2018, 10:19:29 PM PDT, sgubbens <sgubbens@yahoo.com> wrote:

Dear Claire.

Thanks for your detailed response.

Tonight I was watching the sunset from our upstairs office. It was a unique deep red from the smoke in the air from the fires. I realized that with the second floor addition we would not be able to see sunsets anymore, deep red or not. If you look at the layout of our house you'll see that the front is on busy Channing Ave. The rear is the peacefull, quiet side. with some very nice views over 840 Kipling. Those would dissappear.

Please also consider the house to the right of 840 Kipling. It is on a very substandard lot as well and only ~5 ft from 840 Kipling. It could never be built like that again. With the second story added this would look very dense. Would they in the future be allowed to add a second story as well?

Again, we don't want to deny our neighbors more square footage, just not on a second story at our expense.

Thank you for your consideration,

On Tuesday, June 26, 2018, 8:31:08 AM PDT, Hodgkins, Claire <Claire.Hodgkins@CityofPaloAlto.org> wrote:

Good morning Alexander and Karen,

Thank you for sending these comments. I am still evaluating this project and have not yet made any determination, internally or in communication with the applicant, on whether we could make the findings for a variance. I will ensure that your comments are considered in making that determination and keep you updated along the way. I am still doing research on other properties in the vicinity and within the same zoning district to determine whether the site is unique, reviewing the SOFA 1 Coordinated Area Plan (the project is located within the area covered under this plan) to determine whether it conflicts with any policies outlined in that plan, and looking into any data we have on the historic status of the property from past HRB hearings (it appears this site did go to the HRB in the past to determine its historical merit so I'm working on getting minutes from that meeting today from the historical society).

Although I don't know what has been said in the past by any other planner or by Peter (who is no longer with the City), I will note that our planning department does not proactively support the circumvention of our regulations. However, if asked, we have an obligation to provide any reasonably available information on the property owners options to the best of our ability. The variance process is written into our municipal code and is an available option to any property owner. However, in letting applicants know of this option I and my colleagues try to preempt that discussion with a clear disclaimer that the granting of variances is rare given that the findings are difficult to make and that there are no guarantees that a variance would be approved if they apply.

Regards,
Claire

<image001.jpg>

Claire Hodgkins, AICP, Planner

250 Hamilton Avenue | Palo Alto, CA 94301

O: 650-329-2116 | E: claire.hodgkins@cityofpaloalto.org

To: Hodgkins, Claire
Cc: Karen Han
Subject: 840 Kipling St, file number 18PLN-00185

Attachment C

Dear Ms. Hodgkins,

We write you to ask that the requested variance for the proposed 639 square foot second-story addition at 840 Kipling St be denied.

We are the immediate neighbors of 840 Kipling St. The proposed second-story addition comes directly at the expense of our views, privacy, and light.

840 Kipling St. is a substandard parcel and no second story is allowed. This was the case when the current owners bought the property and today. When we bought our property in 2007, we did so with the understanding that the privacy, views and light of the property we were buying would be protected.

The plans submitted by the owner of 840 Kipling St are highly deceptive with respect to the suggested minimal impact on our property. The impact is very significant and cannot be represented by a few lines on a drawing. Granting a variance for a second-story addition would constitute a significant decrease in the enjoyment of our property and significant direct transfer of resale value from our property to 840 Kipling St.

We are not opposed to the owners of 840 Kipling gaining more square footage. We have long suggested to them that they extend their property to the rear property line. If this requires a variance, then we will most likely support that. This approach would both be cheaper and have next to no impact on neighboring properties.

We originally wrote about this project to Dr. Peter Pirnejad on May 7, 2017. Based on comments made by the owners of 840 Kipling St and their architect, and their architect's connections to the planning department we were concerned that the planning department was proactively assisting our neighbors circumvent existing zoning laws at our expense. Please see that letter as well for further articulation of our opposition to the second-story addition and our concerns around the process.

Please acknowledge receipt of this e-mail and the next steps in this process.

Sincerely,

Alexander Gubbens and Karen Han



PLANNING & COMMUNITY ENVIRONMENT

CITY OF
**PALO
ALTO**250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
650.329.2441

January 15, 2020

Martin Bernstein Architect
POB 1261
Palo Alto, CA 94301
Email: martinbernstein617@gmail.com

SUBJECT: 840 Kipling Street; 18PLN-00185 Individual Review, Variance and Historic Review Approval

The Director of Planning and Community Environment has conditionally approved your Individual Review, Variance and Historic Review application, to allow exterior modifications and construction of a 184 square foot first-story addition and a 489 square foot second-story addition to an existing single-story residence on a substandard parcel. The Variance is requested to allow second-story addition on a substandard lot and to allow an approximately 6.3 foot extension to the existing non-complying first-floor wall on the west elevation, where the existing home is located 3.5' from the interior side property line. Environmental Assessment: Exempt from CEQA in Accordance with Guideline Section 15301 (Additions to Residential). Zoning District: R-2 (Two Family Residential District). This approval was granted pursuant to the Palo Alto Municipal Code Sections 18.76.030 and 18.77.075. As conditioned, the project complies with the R-2 Zone District development regulations.

The Individual Review approval will become effective 14 days from the postmark date of this letter, unless the Planning Department receives a written request for a Directors Hearing prior to the end of the business day 14 calendar-days after the postmark date. Only an applicant, or the owner or tenant of an *adjacent property* may request a hearing. In accordance with the provisions of PAMC Chapter 18.77.060(c), any person may request a hearing of the Variance decision before the Planning and Transportation Commission. Such request must be made in writing to the Planning Division within 14 calendar days of the publication or mailing of this decision. As the plans may have been revised since the original submittal, interested parties may wish to review the tentatively approved plans online at the City's Planning Application webpage <http://bit.ly/PABuildingEye>. If you need assistance reviewing the plans, you may visit the City's Development Center at 285 Hamilton Avenue.

This letter and attached conditions and findings shall be printed onto building permit plans relating to this approval. **If the building permit has not been issued and construction commenced within two year from the effective approval date, this approval will expire.** A written request for an extension may be submitted prior to the expiration date. The Director may grant a one-year extension of this approval. Should you have any questions regarding this approval, please do not hesitate to call Christy Fong, Project Planner, at (408) 340-5642 x 110 or e-mail at cfong@m-group.us

Sincerely,

Jodie Gerhardt, AICP
Manager of Current Planning

cc: Neighbor notification list (600 ft)
Property Owner

Attachment: Conditions of Approval

VARIANCE FINDINGS

Variance approval is based on the findings indicated under PAMC Section 18.76.030 (c) and is subject to the Conditions of Approval listed below:

(1) Because of special circumstances applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, the strict application of the requirements and regulations prescribed in this title substantially deprives such property of privileges enjoyed by other property in the vicinity and in the same zoning district as the subject property. Special circumstances that are expressly excluded from consideration are:

- (A) The personal circumstances of the property owner, and
- (B) Any changes in the size or shape of the subject property made by the property owner or his predecessors in interest while the property was subject to the same zoning designation.

The subject site was developed in 1912 with a detached garage and a single-story residence that is non-complying with regards to the right-side yard setback. The subject site has a lot area of 4,893 square feet (SF) and a lot width of 39.5 feet. The site is considered as substandard because it does not meet the minimum lot width of 50 feet and the lot area is less than 4,980 SF (83% of the minimum 6,000 SF) than what are allowed in the R-2 zoning district.

Most of the substandard lots found on this block have a lot width of 25' and the lot areas are ranging from approximately 1,970 SF to 2,840 SF, where the remaining properties on this block have a consistent lot width of 50' and consistent lot area of 5,625 SF. The subject property with a lot width of 39.5' and lot area of 4,983 SF is unique to the general lot pattern found in the neighborhood, which offers reasonable space for a second story addition to meet the daylight plane requirement unlike other substandard lots in the area.

The subject property includes a residence with historic merit. In order to be consistent with the Secretary of Interior's Standards for Rehabilitation (SOI standards), additions and alterations to the front façade are generally discouraged as they would alter the historic character of the building. Therefore, this historic home is limited to expansion on the rear part of the building.

The subject property is the only lot on the block that has a non-rectangular shape. The oddly shaped lot includes setbacks that limit the configuration of buildable area. Furthermore, two protected redwood trees in diameters of 42" and 26" are identified in the rear side of the subject property. These trees share a tree protection zone (TPZ) of 35' in radius. After considering prior impacts and existing intrusions to the root system within the TPZ area, the 27% of undisturbed area is crucial to maintain for the preservation of these trees. The TPZ of 35' in radius in the rear yard limits the property owners ability to construction by approximately 530 SF of the 2268 SF buildable area on the subject property.

The purpose of the granting of a variance, as outlined in PAMC Section 18.76.030(a) is to provide a way to grant relief when strict application of the zoning regulation would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the vicinity and same zoning district.

As noted above, the subject property may share similar zoning and historic characteristics as other properties within the immediately vicinity. While the unique size present opportunities for expansion, the shape and natural surrounding impose constraints to the configuration and the size of the buildable area. These site characteristics differentiate this property from other substandard and regular lots within the same zoning district.

- (2) The granting of the application shall not affect substantial compliance with the regulations or constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zoning district as the subject property, and

The R-2 zoning regulation prohibits second floor additions on substandard lots and encourages expansion on the ground floor. As noted above, the subject property presents various limitations for expansion on the ground floor.

With the loss of approximately 530 SF development potential within the buildable area on the ground floor, the project will expand about 184 SF on the first floor outside of the TPZ to preserve the protected trees and requests a 489 SF addition (roughly 22% of total floor area) to be placed on the second floor. The additions would be built within the limitations set forth for floor area and lot coverage in the R-2 zoning district.

The granting of second story addition is in compliance with the regulations of daylight planes and setbacks. The proposed second floor addition is consistent with the height restriction for two-story development in the R-2 zoning district. It will not constitute a grant of privileges inconsistent with the limitation upon other properties in the vicinity and in the same zoning district as the subject property.

The granting of an approximate 6 foot extension of the existing legal non-complying wall, that is setback 3.5 feet from the west side property line, is minor in nature. This request would normally fit within the specific limits set forth for Home Improvement Exception. The design of this small addition will be consistent with the SOI standards. With the objective to locate available floor area for the site on the first floor, the granting of this extension will not constitute a grant of privileges inconsistent with the limitation upon other properties in the vicinity and in the same zoning district as the subject property.

- (3) The granting of the application is consistent with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning), and

The project is generally consistent with the objectives and relevant policies in the Comprehensive Plan. The project will rehabilitate a residence with historic merit by preserving its historic integrity consistent with the SOI Standards (Policy L-2.9, L-6.4, L-7.1, L-7.8). The proposed site plan is sensitive to surrounding landscape and will minimize impact to two protected trees (Policy N-2.9, N-2.10). The project includes additions with appropriate scale and height that are compatible with the neighborhood and adjacent structures (Policy L-3.1, L-6.1). The proposed additions will preserve natural light exposure for nearby single-family residences by complying to current regulations for daylight planes and setbacks (Policy L-6.8). The project is consistent with the Comprehensive Plan as a whole.

The subject property is located within the South of Forest Area Phase I Coordinated Area Plan (SOFA I CAP) area. It is in a transitional area between R-2 and DHS (Detached Housing on Small Lots) zoning districts. The project, with increased living space, will support a range of housing options for various ages, household sizes, lifestyles and incomes in the neighborhood (Policy H-6). Through a request of granting exception to development standards, the project will reconfigure the house footprint and massing to preserve significant trees (Policy DC-7). The project is designed to be consistent with the SOI standards, which will reinforce its original architectural style and use (Policy DC-9). Overall, the project is compatible with the historical patterns of the surrounding single-family areas and is generally consistent with the SOFA I CAP objectives and policies.

The purpose of R-2 zoning district is 'intended to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for single-family use by the Palo Alto Comprehensive Plan, under regulations that preserve the essential character of single-family use.' (PAMC 18.10.010(b)). The project will maintain its original use as single-family residential and the proposed additions will be consistent with the existing architecture to preserve the essential character of single-family use. Although two dwelling unit is encouraged on appropriate sites within the area, the project site will not meet the minimum site area of 7,500 square feet, that was established by the Comprehensive Plan (Housing Element) and R-2 zoning regulations, to permit additional residential units. The project may; however, include a separate, self-contained accessory dwelling unit for rental. Such option is available but is not mandatory for developments in the R-2 zoning district. Given the site constraints, the project is generally consistent with the purpose of R-2 zoning regulations.

- (4) The granting of the application will not be detrimental or injurious to property or improvements in the vicinity, will not be detrimental to the public health, safety, general welfare, or convenience.

The granting of the variance application would not be detrimental or injurious to property or improvements in the vicinity. The subject property is not located in proximity to designated view corridors or scenic routes. Obstructed view from neighboring properties is not considered as detrimental or injurious in nature. Though, the granting of the variance application shall consider neighbor's concerns with respect to privacy, height and scale at the neighborhood scale.

The proposed additions are in substantial compliance with the five Individual Review Guidelines for single-family homes with the goals to promote new construction that is compatible with existing residential neighborhoods.

The proposed second story window size and placement with above 5' sill height on both left and right elevations will mitigate privacy impact by minimizing the opportunity for direct sight lines into windows and patios of neighboring properties. The proposed second floor addition is rectangular in shape and is setback from the first floor wall planes so that massing is not highly expressed from all sides. In addition, the proposed second floor addition will be built within the required side and rear daylight planes at a height of about 26'-8". The existing building height is 18' and the height limit for two-story development in the R-2 zoning district is 30'. The overall height is still considerably lower than some nearby homes on this block.

The existing west side wall is setback 3' 6" from the west interior property line, therefore this wall is non-conforming. The project will replace one window on this existing wall. This replacement will not exceed the thresholds contained within Code Section 18.70.100, therefore the wall may remain. Additionally, an approximate 6 foot extension to this existing 40.5 foot wall will be added to the rear part of the home and will not be visible from the street. The proposed extension will not decrease privacy and the scale is compatible with the existing home. The proposed extension will not be detrimental to public health and safety, general welfare or convenience.

As conditioned, the project is required to be in compliance with the Municipal Code and other relevant regulations. The proposed additions are not found to pose potential risk to public health, safety, general welfare or convenience. The granting of the variance application would not be detrimental or injurious to property or improvements in the vicinity.

**INDIVIDUAL REVIEW, VARIANCE AND HISTORIC REVIEW
 CONDITIONS OF APPROVAL
 840 Kipling Street, 18PLN-00185**

The approval is subject to compliance with the following conditions. The property owner is solely responsible for the conditions of approval being met. Planning staff recommends the property owner discuss the conditions of approval with the contractor, designer, etc. and contact Planning staff with any questions.

The approval is subject to the following conditions:

PLANNING DIVISION CONDITIONS:

1. **CONFORMANCE WITH PLANS.** Construction and development shall conform to the approved plans entitled, "Reyna/Kutlu Residence, 840 Kipling Street, Palo Alto, CA 94301, APN 120-17-028," stamped as received by the City on November 20, 2019 on file with the Planning Department, 250 Hamilton Avenue, Palo Alto, California except as modified by these conditions of approval.
2. **BUILDING PERMIT.** Apply for a building permit and meet any and all conditions of the Planning, Fire, Public Works, and Building Departments.
3. **BUILDING PERMIT PLAN SET.** A copy of this cover letter and conditions of approval shall be printed on the second page of the plans submitted for building permit. Project plans submitted for Building permits shall incorporate the following changes:
 - a. Eliminate all windows in the proposed stairway under the gable on the east elevation
 - b. Replicate the size and style of the existing small historic window on the east elevation (Sheet A5) and locate the said window in the proposed new bathroom on the first floor.
 - c. Allow the relocation of existing double French doors from the proposed entry hall to the living room on the first floor.
 - d. Allow the relocation of the single door from the proposed living room to the entry hall on the first floor. A new sidelite shall be installed to fill in the existing opening facing the street.
4. **HISTORIC BUILDING.** As conditioned above (Condition #3), all exterior alterations and additions proposed in the building permit submittal shall be in substantial compliance with the Secretary of the Interior's Standards for Rehabilitation. All exterior changes shall not impact the historic nature of existing home and shall not affect the primary façade that retains architectural integrity. Any work involving with the removal or modification of the historic character of the existing home is subject to review by the Chief Planning Official for compliance with the Secretary of the Interior Standards.
5. **SOI STANDARDS.** The ten Secretary of the Interior's (SOI) Standards for Rehabilitation shall be printed on one of the initial sheets of the Building Permit Plan Set.
6. **NONCOMPLYING FACILITY WALLS.** The applicant has agreed to maintain all non-complying walls with the exception of proposed windows changes as shown on Sheet A5.2. These improvements have been reviewed and found to be in conformance with PAMC Section 18.70.100(b) as described below. Any additional changes would require prior Planning approval.

- a. When the damage or destruction of a noncomplying facility affects a portion of the facility that constituted or contributed to the noncompliance, any replacement or reconstruction to such damaged portion shall be accomplished in such manner as not to reinstate the noncompliance or degree of noncompliance caused by the destroyed or damaged portion of the facility, and otherwise in full compliance with this title; however, if the cost to replace or reconstruct the noncomplying portion of the facility to its previous configuration does not exceed fifty percent of the total cost to replace or reconstruct the facility in conformance with this subsection, then the damaged noncomplying portion may be replaced or reconstructed to its previous configuration. In no event shall such replacement or construction create, cause, or increase any noncompliance with the requirements of this title.
7. **PROJECT MODIFICATIONS:** All modifications to the approved project shall be submitted for review and approval prior to construction. If during the Building Permit review and construction phase, the project is modified by the applicant, it is the responsibility of the applicant to contact the Planning Division/project planner directly to obtain approval of the project modification. It is the applicant's responsibility to highlight any proposed changes to the project and to bring it to the project planner's attention.
8. **REQUIRED PARKING:** All single family homes shall be provided with a minimum of one covered parking space (10 foot by 20 foot interior dimensions) and one uncovered parking space (8.5 feet by 17.5 feet).
9. **UTILITY LOCATIONS:** In no case shall utilities be placed in a location that requires equipment and/or bollards to encroach into a required parking space. In no case shall a pipeline be placed within 10 feet of a proposed tree and/or tree designated to remain.
10. **NOISE PRODUCING EQUIPMENT:** All noise producing equipment shall be located outside of required setbacks, except they may project 6 feet into the required street side setbacks. In accordance with Section 9.10.030, No person shall produce, suffer or allow to be produced by any machine, animal or device, or any combination of same, on residential property, a noise level more than six dB above the local ambient at any point outside of the property plane.
11. **DAYLIGHT PLANE:** The daylight plane must clear the point where the wall plane intersects the top of the roof material.
12. **IMPERVIOUS SURFACE:** A minimum of 60 % of the required front yard shall have a permeable surface that permits water absorption directly into the soil (Section 18.12.040 (h)). The building permit plan set shall include a diagram demonstrating compliance.
13. **REQUIRED IR LANDSCAPING/TREES.** The following landscaping is required to ensure the project's conformance with the City's IR Guidelines and therefore must remain for the life of the structure. Required screening trees and shrubs shall be a minimum size of 24 inch box and measure at least eight (8) feet tall.
 - a. All shrubs and/or trees, shown on the site plan, shall be maintained on the property.
 - b. Two existing redwood trees protected by construction fencing located along the rear property line on the site plan shall be maintained.
14. **NO NET LOSS OF CANOPY.** Any proposal of tree removal must be reviewed or approved by Planning Division prior to signing off the final inspection for the building permit.
15. **PROJECT ARBORIST.** The property owner shall hire a certified arborist to ensure the project conforms to all Planning and Urban Forestry conditions related to landscaping/trees.

16. TREE PROTECTION FENCING. Tree protection fencing shall be required for the front street tree and the rear yard redwood trees.
17. FENCES. Fences and walls shall comply with the applicable provisions of Chapter 16.24, Fences, of the Palo Alto Municipal Code (PAMC). Heights of all new and existing fencing must be shown on the Building Permit plans.
 - a. Where the existing fence is located off the subject property and/or where the existing fence is failing, a new Code compliant fence shall be constructed.
18. BASEMENT WALLS: Basement retaining walls shall not extend beyond the exterior wall plane of the first floor of the house, excluding lightwells, below grade patios and approved extensions, to the satisfaction of the Director of Planning.
19. BASEMENT CONSTRUCTION WALLS: Any walls, temporary or otherwise, installed to facilitate construction of a basement shall be removed or constructed in such a way as to not significantly restrict the growth of required landscaping, to the satisfaction of the Director of Planning.
20. DECONSTRUCTION SURVEY: A Deconstruction Survey is required for demolition permit applications submitted on or after January 1, 2017. This survey submittal shall include a list of materials that are salvageable from the project as well as the values of such materials. At this time, the City's only approved vendor for this service is The ReUse People. Contact them to schedule this FREE service by phone (888)588-9490 or e-mail info@thereusepeople.org. More information can be found at www.TheReusePeople.org. If you have further questions, please contact Scott McKay at scott.mckay@cityofpaloalto.org.
21. PLANNING FINAL INSPECTION. A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a Building Division final. Any revisions during the building process must be approved by Planning, including but not limited to; materials, fenestration and hard surface locations. Contact your Project Planner at the number below to schedule this inspection.
22. PERMIT EXPIRATION. The project approval shall be valid for a period of **two years** from the original date of approval. Application for a one year extension of this entitlement may be made prior to expiration, by emailing the Current Planning Support Staff (Alicia Spotwood - Alicia.Spotwood@CityofPaloAlto.org). If a timely extension is not received, or the project has already received an extension and the applicant still wishes to pursue this project, they must first file for a new Planning application and pay the associated fees. This new application will be reviewed for conformance with the regulations in place at that time.
23. INDEMNITY: To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

GREEN BUILDING & ENERGY REACH CODE REQUIREMENTS:

NOTICE FOR PERMIT APPLICATIONS SUBMITTED ON OR AFTER 1/1/17: Please be advised that the Palo Alto City Council has approved Energy Ordinance 5383 and Green Building Ordinance 5393 for all new permit applications with an effective date for January 1st, 2017. To review the upcoming changes, visit the Development Services webpage. On the left-hand side under "EXPLORE", hover over "Green Building" and select "Compliance." For information regarding the Model Water Efficient Landscape Ordinance, please see the Outdoor Water Efficiency Webpage for compliance documentation. You may also email Green Building at GreenBuilding@cityofpaloalto.org for specific questions about your project.

24. GREEN BUILDING CONDITIONS OF APPROVAL

- a) The project is a residential addition or alterations that increased the building's conditioned area volume, or size and the altered area is less than 1000 square feet and therefore must meet the California Green Building Code mandatory requirements outlined in Chapter 4, (with local amendments). (Ord. 5393 §1, 2016)
- b) Model Water Efficient Landscape Ordinance (MWELo): The project is a residential new construction project with an aggregate landscape area of 500 square feet or more included in the project scope of work and therefore shall comply with the requirements of the Landscape Documentation Package (§492.3). Please see the Outdoor Water Efficiency Webpage for compliance documentation. (MWELo Title 23, Chapter 2.7)
- c) The project includes a residential alteration or addition that is not considered a repair or maintenance and therefore the building permit applicant shall replace all noncompliant plumbing fixtures within the building with water conserving plumbing fixtures in compliance with California Senate Bill 407. (SB 407/California Civil Code Sections 1101.1 through 1101.8, 2013 CGBC Section 301)
- d) The project is a residential construction project of any size and therefore must meet the enhanced construction waste reduction at Tier 2 (80% construction waste reduction). PAMC 16.14.260 (Ord. 5393 § 1 (part), 2016)

25. LOCAL ENERGY REACH CODE CONDITIONS OF APPROVAL

- a) The project includes new residential construction of any size and therefore triggers the Local Energy Efficiency Reach Code. For all new single-family residential there are two compliance options and one all-electric exception.
 - i) Single-Family Residential Options:
 - (1) OPTION 1: Performance: New single-family residential construction projects without a solar photovoltaic (PV) system, the performance approach specified within the 2016 California Energy Code shall be used to demonstrate that the TDV Energy of the proposed building is at least 10% less than the TDV Energy of the Standard Design, if the proposed building does not include a PV systems.
 - (a) Solar Ready Infrastructure: A dedicated solar zone shall be located on the roof or overhang of the building and have a total area no less than 500 square feet. Install a conduit extending from the roofline and terminating at the electrical panel.
 - (2) OPTION 2: Performance: New single-family residential construction projects with a solar photovoltaic (PV) system, the performance approach specified within the 2016 California

Energy Code shall be used to demonstrate that the TDV Energy of proposed single-family residential construction is at least 20% less than the TDV Energy of the Standard Design, if the proposed building includes a photovoltaic system.

(a) Solar Ready Infrastructure: A dedicated solar zone shall be located on the roof or overhang of the building and have a total area no less than 500 square feet. Install a conduit extending from the roofline and terminating at the electrical panel.

b) All Electric Exemption:

i) All- Electric Exception to the Local Energy Reach Code: New single-family residential construction that is designed and built to be all-electric shall be exempt from the requirements of Section 100.3. Local Energy Efficiency Reach Code.

26. Additional Green Building and Energy Reach Code information, ordinances and applications can be found at http://www.cityofpaloalto.org/gov/depts/ds/green_building/default.asp. If you have any questions regarding Green Building requirements please call the Green Building Consultant at (650) 329-2179.

PUBLIC WORKS URBAN FORESTRY CONDITIONS – Walter Passmore walter.passmore@cityofpaloalto.org

PRIOR TO DEMOLITION, BUILDING OR GRADING PERMIT ISSUANCE

27. **TREE PROTECTION COMPLIANCE.** The owner and contractor shall implement all protection and inspection schedule measures, design recommendations and construction scheduling as stated in the TPR & Sheet T-1, and is subject to code compliance action pursuant to PAMC 8.10.080. The required protective fencing shall remain in place until final landscaping and inspection of the project. Project arborist approval must be obtained and documented in the monthly activity report sent to the City. The mandatory Contractor and Arborist Monthly Tree Activity Report shall be sent monthly to the City (pwps@cityofpaloalto.org) beginning with the initial verification approval, using the template in the Tree Technical Manual, Addendum 11.
28. **PLAN CHANGES.** Revisions and/or changes to plans before or during construction shall be reviewed and responded to by the (a) project site arborist, or (b) landscape architect with written letter of acceptance before submitting the revision to the Building Department for review by Planning, PW or Urban Forestry.
29. **TREE DAMAGE.** Tree Damage, Injury Mitigation and Inspections apply to Contractor. Reporting, injury mitigation measures and arborist inspection schedule (1-5) apply pursuant to TTM, Section 2.20-2.30. Contractor shall be responsible for the repair or replacement of any publicly owned or protected trees that are damaged during the course of construction, pursuant to Title 8 of the Palo Alto Municipal Code, and city Tree Technical Manual, Section 2.25.
30. **GENERAL.** The following general tree preservation measures apply to all trees to be retained: No storage of material, topsoil, vehicles or equipment shall be permitted within the tree enclosure area. The ground under and around the tree canopy area shall not be altered. Trees to be retained shall be irrigated, aerated and maintained as necessary to ensure survival. Minimal excavation work shall be allowed within the tree enclosure area. Air, water movement to the soil and soil compaction shall be protected to the possible extent. Landscape changes may enhance root growth or health in areas outside the limit of construction. The project arborist shall be responsible for supervising any construction activities within the tree protection zone.

31. **BUILDING PERMIT SUBMITTAL- PROJECT ARBORIST CERTIFICATION LETTER.** Prior to submittal for staff review, attach a Project Arborist Certification Letter that he/she has; (a) reviewed the entire building permit plan set submittal and, (b) affirm that ongoing Contractor/Project Arborist site monitoring inspections and reporting have been arranged with the contractor or owner (see Sheet T-1) and, (c) understands that design revisions (site or plan changes) within a TPZ will be routed to Project Arborist/Contractor for review prior to approval from City.
32. **TREE PROTECTION VERIFICATION.** Prior to any site work verification from the contractor that the required protective fencing is in place shall be submitted to the Urban Forestry Section. The fencing shall contain required warning sign and remain in place until final inspection of the project.
33. **EXCAVATION RESTRICTIONS APPLY (TTM, Sec. 2.20 C & D).** Any approved grading, digging or trenching beneath a tree canopy shall be performed using 'air-spade' method as a preference, with manual hand shovel as a backup. For utility trenching, including sewer line, roots exposed with diameter of 1.5 inches and greater shall remain intact and not be damaged. If directional boring method is used to tunnel beneath roots, then Table 2-1, Trenching and Tunneling Distance, shall be printed on the final plans to be implemented by Contractor.

PRIOR TO OCCUPANCY

34. **PROJECT ARBORIST INSPECTION LETTER.** The contractor shall call for a final inspection by the Project Arborist to evaluate all trees to be retained and protected, as indicated in the approved plans, of the activity, health, welfare, mitigation remedies for injuries, if any, and for the long term care of the trees for the new owner. The final project arborist letter report shall be provided to the Planning Department prior to written request for temporary or final occupancy. The final report may be used to navigate any outstanding issues, concerns or security guarantee return process, when applicable.

PUBLIC WORKS ENGINEERING CONDITIONS – Christina Thurman Christina.thurman@cityofpaloalto.org

35. **GRADING & DRAINAGE PLAN:** The plan set must include a basic grading & drainage plan that includes drainage flow arrows to demonstrate proper drainage of the site. Adjacent grades must slope away from the house a minimum of 2% or 5% for 10-feet per 2013 CBC section 1804.3. Downspouts and splash blocks should be shown on this plan, as well as any site drainage features such as swales, area drains, bubblers, etc. Grading that increases drainage onto, or blocks existing drainage from neighboring properties, will not be allowed. Public Works generally does not allow rainwater to be collected and discharged into the street gutter, but encourages the developer to keep rainwater onsite as much as feasible by directing runoff to landscaped and other pervious areas of the site. See the Grading & Drainage Plan Guidelines for New Single Family Residences on the City's website.
<http://www.cityofpaloalto.org/civicax/filebank/documents/2717>
36. Provide the following note on the Site Plan and adjacent to the work within the Public road right-of-way.
 "Any construction within the city's public road right-of-way shall have an approved Permit for Construction in the Public Street prior to commencement of this work. THE PERFORMANCE OF THIS WORK IS NOT AUTHORIZED BY THE BUILDING PERMIT ISSUANCE BUT SHOWN ON THE BUILDING PERMIT FOR INFORMATION ONLY."
37. Provide the following note on the Site Plan and Grading and Drainage Plan: "Contractor shall not stage, store, or stockpile any material or equipment within the public road right-of-way." Construction phasing shall be coordinate to keep materials and equipment onsite.

38. STORM WATER POLLUTION PREVENTION: The City's full-sized "Pollution Prevention - It's Part of the Plan" sheet must be included in the plan set. Copies are available from Public Works on our website <http://www.cityofpaloalto.org/civicax/filebank/documents/27325>.
39. Provide the following as a note on the Site Plan: "The contractor may be required to submit a logistics plan to the Public Works Department prior to commencing work that addresses all impacts to the City's right-of-way, including, but not limited to: pedestrian control, traffic control, truck routes, material deliveries, contractor's parking, concrete pours, crane lifts, work hours, noise control, dust control, storm water pollution prevention, contractor's contact, noticing of affected surrounding properties, and schedule of work. The requirement to submit a logistics plan will be dependent on the number of applications Public Works Engineering receives within close proximity to help mitigate and control the impact to the public-right-of-way. If necessary, Public Works may require a Logistics Plan during construction."

PUBLIC WORKS ELECTRIC ENGINEERING CONDITIONS –

Gregory McKernan Gregory.mckernan@cityofpaloalto.org

GENERAL

40. The applicant shall comply with all the Electric Utility Engineering Department service requirements noted during plan review.
41. The applicant shall be responsible for identification and location of all utilities, both public and private, within the work area. Prior to any excavation work at the site, the applicant shall contact Underground Service Alert (USA) at 1-800-227-2600, at least 48 hours prior to beginning work.
42. The applicant shall submit a request to disconnect all existing utility services and/or meters including a signed affidavit of vacancy, on the form provided by the Building Inspection Division. Utilities will be disconnected or removed within 10 working days after receipt of request. The demolition permit will be issued after all utility services and/or meters have been disconnected and removed.

SUBMITTALS FOR ELECTRIC SERVICE

43. A completed Electric Load Sheet and a full set of plans must be included with all applications involving electrical work. The load sheet must be included with the preliminary submittal.
44. Only one electric service lateral is permitted per parcel. Utilities Rule & Regulation #18. Page 2 of 3
45. If this project requires padmount transformers, the location of the transformers shall be shown on the site plan and approved by the Utilities Department and the Architectural Review Board. Utilities Rule & Regulations #3 & #16 (see detail comments below).
46. The developer/owner shall provide space for installing padmount equipment (i.e. transformers, switches, and interrupters) and associated substructure as required by the City.
47. The customer shall install all electrical substructures (conduits, boxes and pads) required from the service point to the customer's switchgear. The design and installation shall be according to the City standards and shown on plans. Utilities Rule & Regulations #16 & #18.

48. Location of the electric panel/switchboard shall be shown on the site plan and approved by the Architectural Review Board and Utilities Department.
49. All utility meters, lines, transformers, backflow preventers, and any other required equipment shall be shown on the landscape and irrigation plans and shall show that no conflict will occur between the utilities and landscape materials. In addition, all aboveground equipment shall be screened in a manner that is consistent with the building design and setback requirements.
50. For underground services, no more than four (4) 750 MCM conductors per phase can be connected to the transformer secondary terminals; otherwise, bus duct must be used for connections to padmount transformers. If customer installs a bus duct directly between the transformer secondary terminals and the main switchgear, the installation of a transition cabinet will not be required.
51. The customer is responsible for sizing the service conductors and other required equipment according to the National Electric Code requirements and the City standards. Utilities Rule & Regulation #18.
52. Any additional facilities and services requested by the Applicant that are beyond what the utility deems standard facilities will be subject to Special Facilities charges. The Special Facilities charges include the cost of installing the additional facilities as well as the cost of ownership. Utilities Rule & Regulation #20.
53. Projects that require the extension of high voltage primary distribution lines or reinforcement of offsite electric facilities will be at the customer's expense and must be coordinated with the Electric Utility. D

DURING CONSTRUCTION

54. Contractors and developers shall obtain permit from the Department of Public Works before digging in the street right-of-way. This includes sidewalks, driveways and planter strips.
55. At least 48 hours prior to starting any excavation, the customer must call Underground Service Alert (USA) at 1-800-227-2600 to have existing underground utilities located and marked. The areas to be check by USA shall be delineated with white paint. All USA markings shall be removed by the customer or contractor when construction is complete.
56. The customer is responsible for installing all on-site substructures (conduits, boxes and pads) required for the electric service. No more than 270 degrees of bends are allowed in a secondary conduit run. All conduits must be sized according to National Electric Code Page 3 of 3 requirements and no 1/2 – inch size conduits are permitted. All off-site substructure work will be constructed by the City at the customer's expense. Where mutually agreed upon by the City and the Applicant, all or part of the off-site substructure work may be constructed by the Applicant.
57. All new underground conduits and substructures shall be installed per City standards and shall be inspected by the Electrical Underground Inspector before backfilling.
58. The customer is responsible for installing all underground electric service conductors and other required equipment. The installation shall meet the National Electric Code and the City Standards.
59. Meter and switchboard requirements shall be in accordance with Electric Utility Service Equipment Requirements Committee (EUSERC) drawings accepted by Utility and CPA standards for meter installations.

60. Shop/factory drawings for switchboards (400A and greater) and associated hardware must be submitted for review and approval prior to installing the switchgear to: Gregory McKernan, P.E. Power Engineer Utilities Engineering (Electrical) 1007 Elwell Court Palo Alto, CA 94303
61. Catalog cut sheets may not be substituted for factory drawing submittal.
62. All new underground electric services shall be inspected and approved by both the Building Inspection Division and the Electrical Underground Inspector before energizing.

AFTER CONSTRUCTION & PRIOR TO FINALIZATION

63. The customer shall provide as-built drawings showing the location of all switchboards, conduits (number and size), conductors (number and size), splice boxes, vaults and switch/transformer pads. PRIOR TO ISSUANCE OF BUILDING OCCUPANCY PERMIT 1. The applicant shall secure a Public Utilities Easement for facilities installed on private property for City use.
64. All required inspections have been completed and approved by both the Building Inspection Division and the Electrical Underground Inspector.
65. All fees must be paid.
66. All Special Facilities contracts or other agreements need to be signed by the City and applicant.

End Project Conditions

	Law Offices Of	
	Charles S. Bronitsky	
Telephone	533 Airport Blvd, Suite 326	Fax
(650) 918-5760	Burlingame, California 94010	(650) 649-2316
	www.bronitskylaw.com	

February 3, 2020

Planning and Traffic Commission
City of Palo Alto
Planning & Community Environment
250 Hamilton Avenue
Palo Alto, CA 94301

Re: 840 Kipling Street - 18PLN-00185

Dear Chair and PTC Members:

I am writing today on behalf of Alexander Gubbens and Karen Han, owners of 441 Channing Avenue, in connection with the variance and Historic Resource applications submitted by the owners of 840 Kipling Street, their immediate neighbors. The owners of 840 Kipling are seeking a variance to add a 489 square foot second story to their property. The applications have been conditionally approved by City Staff.

Mr. Gubbens and Ms. Han want to make it clear that they do not oppose an addition. Rather, they oppose a second story addition for the simple reason that the ground floor has ample space on which to build an addition, whereas a second story requires a variance and would be injurious to the value and enjoyment of the Gubbens/Han home.

It is important to note at the outset that Mr. Gubbens and Ms. Han first informed the owners of 840 Kipling of their opposition to a second story addition in January 2016 and proactively informed the City's Planning Department of their concerns back in May 2017, more than a year before any plans were even submitted. Mr. Gubbens and Ms. Han have, since the very beginning, supported an addition on the ground floor. Despite this, the property owners have steadfastly refused to look at options available to them that would avoid a second story and use more of the ground floor.

From various written communication Mr. Gubbens and Ms. Han have seen they are further concerned that the owners of 840 Kipling were not required to fully study a number of feasible alternatives to a second story addition but were instead required to make only minor revisions to their design and obtain conditional approval of their proposed second-story addition. Since a variance should be a last resort, City Staff should have required additional studies be done.

Mr. Gubbens and Ms. Han believe, as shown below, that such a zoning-compliant reward

expansion is highly feasible and should be explored. Thus, we are asking that the PTC deny the variance. 840 Kipling is zoned R-2 which Zone is entitled “**Low Density Residential**”. 840 Kipling is also part of the South of Forest Avenue Coordinated Area Plan Phase I (“SOFA I CAP”) and has been determined to be an historic property by the Historic Resources Board (“HRB”).

Within the R-2 zone 840 Kipling, is a substandard lot meaning that it is less than 50 feet wide and the total area of the lot is less than 83% of the minimum lot size. (Palo Alto Municipal Code §18.10.040(b)(1)(A)). Thus, to even be classified as a substandard lot is already a statement that the lot is very small.

Palo Alto Municipal Code § 18.10 contains the regulations that determine what can and cannot be built on 840 Kipling. § 18.10.040(a) provides that the minimum lot size for an R-2 zoned property is 6,000 square feet. The parcel at 840 Kipling is 4,893 square feet and is therefore a substandard lot under Municipal Code § 18.10.040(b). Moreover, at thirty-nine (39) feet, the width of the 840 Kipling lot is less than 80% of the minimum fifty-foot width required in the Palo Alto Municipal Code for a standard lot in the R-2 Zone. Thus, when viewing the property from the street, the proposed remodeled home all but overwhelms the substandard lot size.

As a substandard lot the Municipal Code expressly provides that “[t]here shall be a limit of one habitable floor.” Municipal Code § 18.10.040(b)(1)(B)(ii) (emphasis added). Thus, the law in Palo Alto is clear that no second story is allowed on a substandard lot in the R-2 zone. Because of that limitation, the property owner applied for a variance.

Palo Alto Municipal Code § 18.76.030(c) (1) (A) specifically states that

“Special circumstances that are expressly excluded from consideration are . . . The personal circumstances of the property owner.”

However, in arguing in favor of their request for a variance to build a second story, the property owners made it expressly clear that the need for the second story addition was driven entirely by personal circumstances. As the property owner told the City Staff:

“We were actually looking originally for a three bedroom two bathrooms so that we could have some space to grow in because we were looking for a family. Then when we walked into 840 Kipling this was home. This was the first home we’d walked into that just grabbed us and said this is where we want to live. You know it’s smaller than we wanted but the beauty of it the charm of it just made our decision when we walked in . . . Now we’ve been there 20 years. We now have a teenage son we have two aging moms that want to visit and take of as best we can and this two in one is just not working.”

While it is understandable that the property owner wants a larger home than the one purchased due to family concerns, the fact is that such personal issues are not a proper consideration for the granting of a variance. “Special circumstances that are expressly excluded from consideration are . . . The personal circumstances of the property owner.” Palo Alto Municipal Code § 18.76.030(c) (1) (A). Thus, whether or not the property owner’s family is getting larger is not a proper basis on which to grant a variance.

In addition, the house at 840 Kipling is also only 3.5 feet away from the property line with its nearest neighbor at 836 Kipling versus the 6-foot interior side yard setback that is required. 836 Kipling, also a substandard lot, has only a 2.5 ft side yard setback with 840 Kipling and no side yard setback at all with 834 Kipling. 836 in fact overhangs 2 ft into 834’s lot! 840 and 836 together have only 6 ft of interior side yard setbacks, far short of the total 18 ft (3 x 6 ft) required by current zoning. This section of Kipling is already far too densely developed. This overall configuration should have been given significant consideration by City Staff, but it does not appear from the January 15, 2020 letter that it did.

Plan Sheet C.0 of the plans submitted for 840 Kipling, shows that there is ample room in the rear yard of the property to construct an addition that would comply with the “one habitable floor” limit for a substandard lot in the R-2 zone. It appears from the Findings, that one of the primary features about this property that make it appropriate for a variance, at least according to City Staff, is the thirty-five foot (35’) Tree Protection Zone (TPZ). In fact, the property owner has pointed out that the intrusion into the Tree Protection Zone is already seventy-three percent according to Plan Sheet T2. What the property owner neglects to address is that most of the intrusion is from structures owned by neighbors, including a neighboring home, cottage and garage. All of these structures intrude much further than the property owners would even if they built the entire addition in the rear yard! Moreover, it appears that there was no attempt to look at whether there were roots in the area where a ground floor addition could be built and whether or not those roots could be cut or blocked without harming the tree. Again, why such a study was not required prior to staff conditionally granting a variance is unknown.

The property owners also do not address that back in 2013 they dug a trench and cut major roots within feet of the very trees that they now claim are so sensitive and important to protect! Finally, neither the City nor the property owner address that just on the other side of the Gubbens/Han property, at 400 Channing, new development with basements was allowed wherein the new homes all but touch a number of protected oak and redwood trees!!

There were three different reports prepared by the property owner relating to the TPZ. One concludes that it should be twenty-five feet, another thirty-five feet and another 42 feet! Clearly this is not an exact science and given how close other structures, including

the garage at the property, are to the trees, some additional consideration, engineering and study could have and should have been done to determine whether the entire addition could be built in the rear yard.

As to the TPZ being a critical aspect for granting the variance, as suggested by the Findings, there is no explanation for how those findings are consistent with even just the three new construction projects nearest to the property that received City approval. 441 Channing was built with a basement within 10 feet of a large protected oak tree. 458 Channing was built deep into the TPZ of an even larger protected oak tree than the trees on 840 Kipling. The development at 400 Channing is right now finishing two new homes with basements within 10 feet of a number of protected oak and redwood trees. All of the trees at 400, 458 and 441 Channing continue to do very well despite the far more significant intrusion into the tree protection zone on those properties than is being considered here!

In addition, in early correspondence with the assigned planner, Mr. Gubbens and Ms. Han were promised that the applicants would be required to fully expand the first floor before the City would even consider a variance for a second-floor addition. It does not appear, however, that such a policy was meaningfully applied in this case.

Every substandard lot presents special circumstances and so under that rationale, every substandard lot should be granted a variance to allow construction not in conformance with existing law. However, other than the substandard lot, which should not in and of itself be a factor, and the heritage trees which could be addressed in the same manner as they were addressed in the three most recent projects closest to 840 Kipling at 441, 458 and 400 Channing, there are really no other extraordinary circumstances that would justify the granting of a variance in this matter.

The January 15, 2020 decision letter states:

The purpose of the granting of a variance, as outlined in PAMC Section 18.76.030(a) is to provide a way to grant relief when strict application of the zoning regulation would subject development of a site to substantial hardships, constraints, or practical difficulties that do not normally arise on other sites in the vicinity and same zoning district.

The term “and same zoning district” in this case must be used when comparing to other substandard lots, not to other standard lots. Of course, substandard lots have their limitations, that is why the designation exists and that is why certain types of development, such as the development being proposed here, are prohibited. The constraints imposed by zoning rules for substandard lots cannot be used as the argument to ignore them. Allowing that argument would render any zoning regulations irrelevant.

The Findings also claim that the granting of the application does not constitute a grant of special privilege. As noted above, however, many projects have been approved that clearly have structures built well within the TPZ and clearly structures, including mostly neighboring structures, were built in the TPZ of the trees on this property. Back in 2013, the City allowed the property owners of 840 Kipling to trench and cut roots within feet of the trees. There is, however, no finding that root cutting would even be required were the entire addition to be constructed in the rear yard. In addition, the initial historical study, which will be discussed in more detail below, opposed the project as submitted and recommended a rear one-and-one-half story addition to reduce the overall impact that the proposed construction would have on the historical aspects of the home. There appears to have been no effort at all to study that option.

The granting of a variance should require extraordinary circumstances. In an effort to see what has been done in similar situations, a search on the City of Palo Alto's Building Eye application was done for the term "variance." The search, which goes back to January 1, 2014 revealed only nine instances in which the term was even used and after looking at the details of each of these nine instances there were none in which a variance was granted in a similar situation. In fact, in almost all of these instances the variance application was denied and none of them presented facts as contrary to the existing Municipal Code as those presented in this instance. Thus, it appears that this application was, for some reason, treated more favorably than most others. That should not happen.

In this case the owners of 840 Kipling and the City Staff appear to have gone out of their way to use the TPZ as the very reason to justify a second story addition. In addition, as noted above, the property owners were never required to do a fuller study and better explore a ground-floor only addition. Allowing the second story addition based on the TPZ would be treating this property different from the treatment afforded to others. One need only look only at the nearest three other projects at 441, 458 and 400 Channing where the construction was allowed deep into many TPZs. The fact is that even if the full 673 square foot addition that the 840 Kipling property owners desire is built on the ground floor, the intrusion into the TPZ would be significantly less than what was allowed at 400 Channing, 458 Channing and 441 Channing. Also conveniently ignored are the existing deck and back yard hard surfaces that could readily be for a rearward expansion with no impact on the trees.

Turning next to the review by the HRB which is referenced in the Findings, the original March 19, 2019 report the City commissioned from Page & Turnbull specifically recommended against allowing the proposed development:

Overall, the project as currently designed does not appear to be in compliance with the Secretary of the Interior's Standards for Rehabilitation.

RECOMMENDATIONS

This section includes recommendations to better comply with the Secretary of the Interior's Standards for Rehabilitation:

- *Consider a rear, one-and-a-half story addition, rather than a second story addition, which would have a more minimal impact on the historic roofline and form of the residence*

When compared to the second report which recommended approval, it is readily clear that there were very few changes. Moreover, as noted above, alternatives such as a rear one-and-one-half story addition were completely disregarded. In fact, all that changed were a few windows and a few exterior treatments, but when the plans for the proposed house with the new addition is compared to the existing house, it seems that there was a significant disregard for the fact that the structure has historic significance.

Additionally problematic, is the fact that the property owners were represented at the HRB by its chair. While it appears that he obtained a letter saying that the Fair Political Practices Act did not prohibit him from representing the property owner, the fact is that it presents the appearance of unfair practice. I spent four years as a Planning Commissioner and then nine years as a member of the Foster City City Council with two terms as mayor. Much like you, I took the required ethics programs and from those I remember, and hope you do as well, that what is legal is not necessarily what is ethical. Appearance of impropriety can often be as problematic as actual impropriety.

In this case, Mr. Bernstein first sat as the Chair of an HRB meeting and then stepped down to recuse himself to represent the property owners in a hearing before the very same body. In fact, the original minutes of the meeting refer to him as Chair Bernstein even though he had recused himself. Later, the minutes were changed to refer to him as Mr. Bernstein. If City Staff was confused as to his role, imagine how the public and other interested parties must have felt. While perhaps this is not the forum to address this issue, it seems to be an issue that should be addressed as the public and residents have a right to have an unbiased government and for their processes and hearings to appear unbiased as well.

Finally, 840 Kipling is located in the SOFA I CAP, and so that too is relevant to the Findings and is therefore addressed therein. Having reviewed the SOFA I CAP Report myself it appears to me that the proposed addition at 840 Kipling does not comply with the policies established. The Report, in Chapter II states:

“The livability and the walkability of the neighborhood will be preserved and enhanced through the provision of open space with a proposed neighborhood park, through the maintenance of pedestrian scale urban design improvements, the calming of traffic on area streets, and the creation of new housing for a variety of household types. The area's traditional grid street pattern, its historical buildings, its mature tree canopy, and its mix of land uses will also be preserved.”

“Land vacated by PAMF adjacent to existing lower density residential uses on Channing Avenue between Waverley and Kipling Street will be developed with detached single family homes on small lots (typically 5,000 square feet) consistent with the existing development pattern of these neighborhoods. The Plan allows increased floor area ratios (FAR) as incentives to construct second units as accessory cottages in the rear of the property, usually beside or above the garage, or attached second units as found in many older Palo Alto neighborhoods. These second units will expand the range of available housing types and will increase the total number of housing units in the area.”

Housing and a mix of housing types seems a common theme of the Report. “The Plan has also addressed the City’s desire to create housing for a variety of users beyond the traditional single family neighborhood. **This interest has been furthered by the desire to maintain compatibility of land uses and density with the surroundings and has resulted in the plan facilitating a range of housing types.** These include moderately-sized detached single family homes on small lots with or without rear cottages, multiple-family attached apartments and/or condominiums, and rental housing units in mixed use projects, along with provisions for the inclusion of special housing types such as affordable housing, senior housing, or co-housing.” Chapter III(C) (emphasis added). This is specifically addressed in Policy H-2 which calls for lower density housing in the area where 840 Kipling is located with increased density closer to downtown and Alma Street.

This policy of preserving neighborhoods and having a broad variety of residential unit types would be violated by allowing the variance requested by the applicant. One need not look very far to see that small detached “starter homes” like what is currently located at 840 Kipling are being developed into larger, more expensive and less affordable homes at an alarming rate. Allowing the type of development requested by the variance application in this case will only serve to reduce the pool of “starter homes” in Palo Alto by yet one more, making it difficult, if not impossible for young people and young families to own anything other than a condominium. A pool of “starter homes” is essential for diversity and opportunity and from my reading of the SOFA I CAP Report, a clear and strong policy adopted by the City of Palo Alto. At the very least that issue should be evaluated, and a determination made as to whether yet one more overbuilt lot is a better community option than stabilizing the already limited pool of “starter homes.”

As stated above, the granting of a variance should require exceptional circumstances. It seems from the initial application itself that the basis for the addition consisted of circumstances personal to the property owners, which is circumstances are under the Palo Alto Municipal Code expressly excluded from consideration. It also appears from the January 15, 2020 that the primary factor relied up by City Staff was the Tree Protection Zone. As discussed above in detail, further study could have an should have been done. In addition, the City has been inconsistent in applying the TPZ ordinance, allowing a

number of developments in the neighborhood to be built well into the TPZ. At the very least, credible further study should be done.

The January 15, 2020 decision letter also seems to disregard the problems and potential solutions offered in the first Page & Turnbull letter, including the possibility of a one-and-one-half story rear yard addition. Clearly those options should be explored before a variance is granted.

In general, we see nothing that would support the granting of a variance in this instance. There is nothing exceptional about the particular lot or situation and the neighborhood is already much denser than current zoning requirements would allow. Making it even more dense by granting a variance for no compelling reason is, in my opinion, poor policy and legally it fails to meet the applicable standards set forth in the Palo Alto Municipal Code. It also makes it problematic for other residents who select particular properties to purchase understanding what can and what cannot be built on adjacent lots. As shown on the very first page of the Plans submitted by the property owners, this property is being built out to the maximum allowed and obtaining a variance to do so. Allowing what is prohibited by the current law be built by the granting of a variance, undermines the expectations of adjacent property owners and creates problems where none would exist by the simple application of the existing laws. These laws have a reason and there should therefore be compelling reasons to ignore them. That the property owners are nice people and would like a large home to care for their growing family is, for better or worse, not a compelling reason and certainly no reason to give them a variance to do so.

In summary:

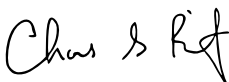
- 840 Kipling is a substandard lot with only one habitable story allowed under the Palo Alto Municipal Code.
- The existing zoning regulations allow the owners of 840 Kipling to expand on the ground floor without having to build a second story.
- 840 Kipling does not suffer substantial hardships, constraints, or practical difficulties that do not normally arise on other substandard sites in the vicinity and same zoning district that should allow a variance for a second story addition.
- The owners of 840 Kipling clearly describe their desire for a variance as driven entirely by personal circumstances. Palo Alto Municipal Code § 18.76.030(c) (1) (A) expressly excludes such personal circumstances from being considered.
- Allowing a second story addition to 840 Kipling would be injurious to the value and enjoyment of 441 Channing.
- 840 Kipling has only a 3.5 side yard setback with 836 Kipling. 836 Kipling Kipling has only a 2.5 ft side yard setback with 840 Kipling and no side yard setback at all on the other side. 840 and 836 Kipling together have only 6 ft of the required total 18 ft side setback. From a street side perspective this section of Kipling is already much denser than

allowed by current zoning. Allowing a second story would increase the density even further directly in conflict with the R-2, Low Density Residential zoning designation.

- The City's commissioned historic review by Page & Turnbull specifically recommended against allowing the proposed development recommending instead a rear one-and-one-half story addition. There is no evidence that this credible option was seriously considered.
- There are significant ethical concerns with respect to the HRB review given that its chair was representing the owners of 840 Kipling at the same meeting at which he presided.
- Adding a rear one-and-half story addition to the "allowable" square footage would leave a significant TPZ. In fact, the TPZ would still be much more than was left for all of the protected oak and redwood trees at the 3 nearest and most recent developments at 400, 441, at 458 Channing Ave.
- The project history shows the owners shifted to a strategy using the TPZ as the reason to justify a variance allowing a second story addition. However, back in 2013 these same owners dug a trench and cut major roots of the two redwood trees much closer to the trees that they would be with a ground floor addition. No attempt was made to see if the trees could be protected with a ground floor only addition. That should have been required as it would be much less intrusive and much more consistent with the applicable zoning than granting a variance.
- A rearward addition on the ground floor is readily possible in ways that do not or only minimally affect the trees. An above ground suspension should, for instance, be considered. Such a construction method was used for instance at 458 Channing.
- The property owners of 840 Kipling were not but should have been asked to seriously consider obvious alternatives to a second story addition. At the very least, the project should be returned to staff and the owners to undertake such a study.
- The owners of 840 Kipling understood the limitations of their substandard lot and accordingly purchased 840 Kipling at the lower price these properties sell for. Mr. Gubbens and Ms. Han trusted they understood what could and could not be built on 840 Kipling and accordingly paid a higher price for the enjoyment they believed was guaranteed with their property. Granting a variance here directly undermines the very reasons zoning regulations exist and makes it impossible for future property owners who select particular properties to purchase understanding what can and what cannot be built on adjacent lots.

We respectfully ask that the variance for a second story addition be denied.

Thank you for reading and considering our concerns,


Charles S. Bronitsky
Attorney at Law

February 3, 2020

Dear Planning & Transportation Commission Members,

We are the owners of 840 Kipling Street. We are coming before you as the result of an appeal filed on our project approval.

We purchased our house in 1998 when the lot adjacent to us was still the staff parking lot for Palo Alto Medical Foundation (PAMF). This parking lot was later redeveloped, as part of SOFA I, into four DHS (Detached Houses on Small Lots) zoned properties. And just as the SOFA Plan strived to have new construction fit into the surrounding context, our goal has always been a modest addition to our house that maintains its existing historic character and fits in well with the existing neighborhood.

Even before we started and throughout the process of developing our project plans, we engaged in neighbor outreach, including to the owners of 441 Channing Ave (one of the DHS homes) who have appealed our project approval. We have strong support from multiple adjacent property owners as well as property owners directly across the street and along our block face. The owners of 836 Kipling St next door to us and whose house is separated from our house at 840 Kipling St by only 5.5' due to pre-zoning development patterns fully support our project. The owners of 441 Channing Ave are the sole objectors to our application.

We applied for and have been granted a Variance for a partial and recessed Second Story Addition due to unusual circumstances on our property which is zoned R-2 and is considered a Substandard Lot. The plans were tentatively approved on January 15, 2020, but that has been appealed by our neighbor at 441 Channing Ave and will be coming in front of you on February 26, 2020.

As you will see in the following pages, the lot for 840 Kipling St is oddly shaped and restricted. And while considered a sub-standard lot due to its 4893 square footage, it functions and appears as a conforming lot at 5005.5 square feet due to a legal and permanent recorded easement in our favor. Back in 2000, while SOFA I plans for the area were being developed, we tried to buy a strip of land adjacent to our driveway to straighten our lot line but the developer was not willing to sell. We have been diligent on trying to address concerns of the neighbor at 441 Channing Ave and have made several changes to our plans at great expense over a three-year period. We had also previously explored all possible options to be able to use the available FAR, including a single-story expansion. However, the special circumstances of our property will not allow for that.

Our property has significant special circumstances that limit our ability to use our available FAR and as such we believe the Findings can be made for a Second Story Variance. The City of Palo Alto Planning Department agrees and has approved our request for a Variance. In what follows, we want to highlight some of the special circumstances of our property.

After reviewing all of the available materials, we hope that the Planning & Transportation Commission will affirm the decision of the Director of Planning and recommend approval of our application for a Variance.

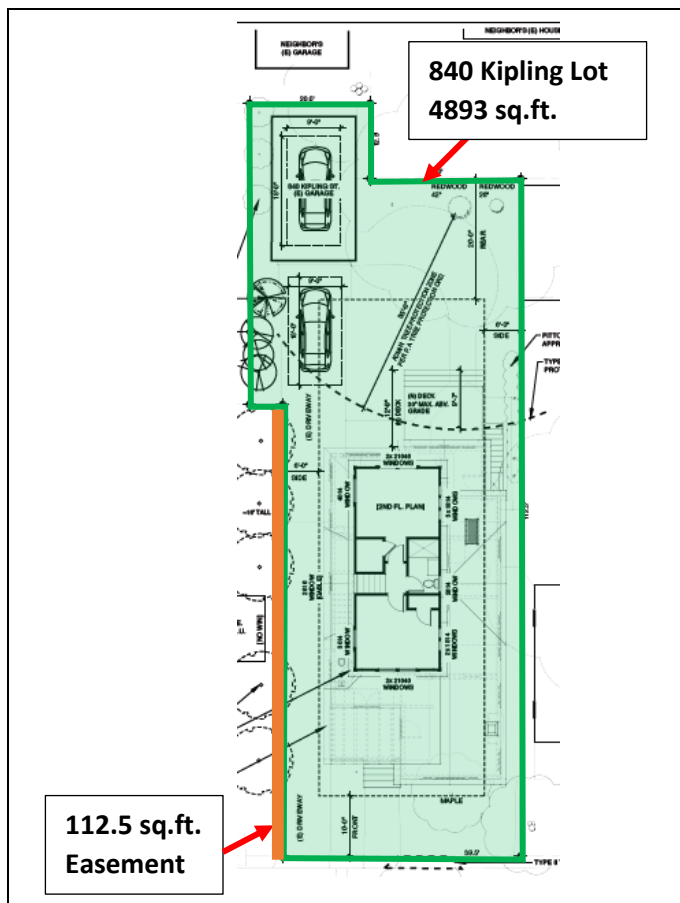
Regards,

Steve Reyna & Aysen Kutlu

840 KIPLING ST IS EFFECTIVELY A CONFORMING LOT

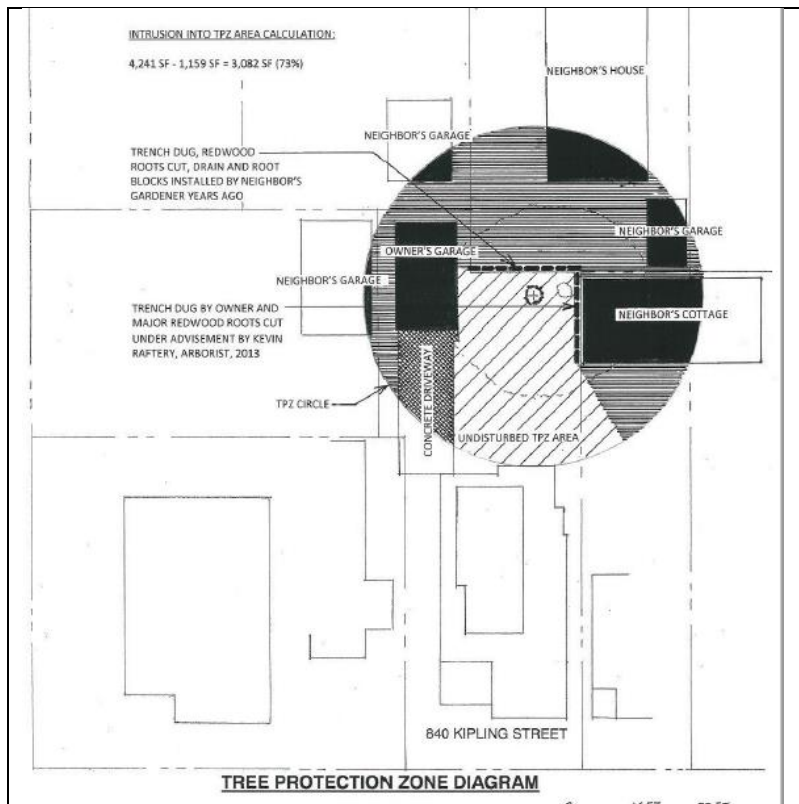
840 Kipling St. is effectively a conforming 5005.5 sq.ft. lot. As such, it would not have required a Variance for a second story. A small 112.5 sq.ft. easement that includes part of our existing driveway contributes to making 840 Kipling St an effectively conforming lot combined with the 4893 sq.ft. of the existing lot. The easement is exclusive use, exists in perpetuity, and can be found in the County Records. This is a significant special condition that contributes to the Findings for a Variance.

The available FAR, location of Setbacks and Daylight Planes for 840 Kipling St project are strictly based on the 4893 sq. ft. we fully own. The easement does not modify or contribute to these. The easement does, however, contribute to the total usable lot area and provides additional Side Setback on the east side adjacent to the house, thus reducing impact of the project on 441 Channing Ave. The house at 840 Kipling St is located on an effective conforming lot area of 5005.5 sq.ft. The lot and associated easement can be seen on the figure below taken from Plan Sheet A1.0.



PROTECTED REDWOODS IN REAR YARD AND ASSOCIATED TREE PROTECTION ZONE (TPZ)

In the rear of the 840 Kipling St lot are two protected redwood trees. The associated Tree Protection Zone extends 35' from the larger tree, and reaches almost to the proposed rear addition. According to the City, intrusions up to 25% of the area of the TPZ are allowed. As shown on Plan Sheet T2, the TPZ of these redwoods is severely impacted by up to 73% of the total area. Only 27% of the TPZ area is not impacted, which primarily consists of the rear yard area between the house and the protected trees. This significantly constrains our ability to extend towards the rear. The Forestry Department does not support additional intrusions into the TPZ. An excerpt from Plan Sheet T2 showing the impacted TPZ is below.



PRESERVATION OF A HISTORIC RESOURCE

840 Kipling St has been determined to be a Contributing Historic Resource and therefore any additions or modifications had to substantially comply with the Secretary of Interior Standards. This imposes additional constraints on how we can modify or alter our residence. Our application has been deemed fully compliant in all 10 of the 10 criteria of the Secretary of Interior Standards by Page & Turnbull, the City's historic consultant. Our project received a unanimous vote of approval from the Historic Resources Board. We understand that it is rare for a project to meet all 10 of the criteria, with projects typically being mostly compliant.

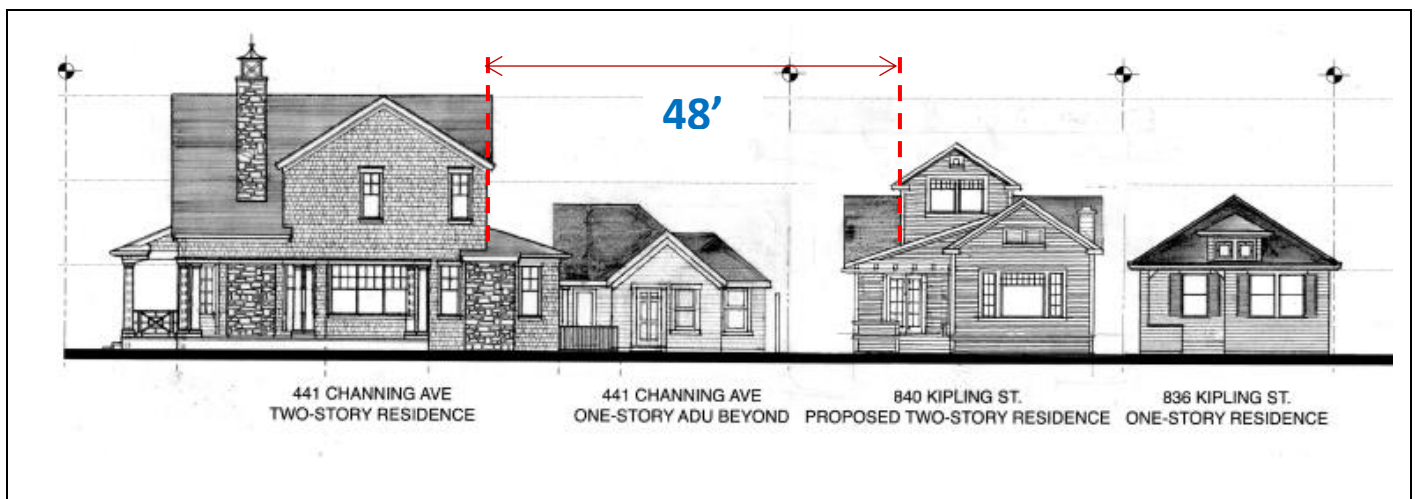
TRANSITION ZONE FROM HIGH DENSITY TO LOWER DENSITY

441 Channing Ave is zoned DHS (Detached Houses on Small Lots), which is a denser zoning designation introduced by the SOFA CAP as a part of redeveloping the former PAMF sites. By having a detached accessory unit, 441 Channing Ave is allowed a maximum FAR of 0.65, as opposed to a maximum FAR of 0.45 for R-2 zoned 840 Kipling St. DHS has no Site Coverage Limit as opposed to a Site Coverage Limit of 0.35 for R-2. According to the zoning regulation, DHS is intended to have a maximum lot size of 5000 sq.ft. 441 Channing Ave is the single largest residential DHS lot in the SOFA Plan Area at 6411 sq.ft. and is fully built out to the 0.65 FAR creating a house of 4,167 sq. ft. and stands at a height of 29 feet.

With a built out FAR of 0.65 and 4,167 sq. ft. on the single largest DHS lot, the scale and mass of 441 Channing Ave dwarfs the R-2 zoned properties around it. 840 Kipling St, at a proposed 2201 sq. ft. (including garage) exists as a transition zone between the mass and scale of 441 Channing Ave on the one side to the less dense R-2 homes along Kipling St on the other. Being a transitional development is another special condition and even opportunity of the property that helps support the Findings for a second story Variance for 840 Kipling St.

An excerpt from Plan Sheet A2.0 is shown below.

We would also like to highlight that the second story of 441 Channing Ave is **located 48' away** from the proposed second story of 840 Kipling St minimizing a lot of potential impact on that property.



THE ADDITION FULLY COMPLIES WITH R-2 ZONING

Other than the specific request for a Variance, the proposed addition to 840 Kipling St fully complies with all R-2 Zoning regulations, including Daylight Planes, Setbacks, etc. With respect to Daylight Planes, even the eaves are fully contained within the Daylight Planes.

The original historic cross-gable roof did and still does project through the Daylight Plane. However, we were required to retain this cross-gable as a condition of satisfying the Secretary of Interior Standards.